



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II **E+W+S**

#### 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.** **E+W**

- (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. **E+W**

- (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. **E+W**

- (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 . . . . . **E+W**

**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 ..... **E+W**

**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. E+W**

- (1) The [<sup>F11</sup>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. E+W**

- (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.] **E+W**

- (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. **E+W**

- (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. **E+W**

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

**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. E+W**

- (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. E+W**

- (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. E+W**

(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.** **E+W**

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.** **E+W**

- (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.** **E+W**

- (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. **E+W**

- (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. **E+W**

- (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. E+W**

- (1) There shall be a body corporate to be known as the Authorised Conveyancing Practitioners Board (in this Act referred to as “the Board”).
- (2) The Board shall consist of a Chairman and at least four, and at most eight, other members appointed by the [F43Secretary of State] .
- (3) In appointing any member, the [F43Secretary of State] shall have regard to the desirability of—
  - (a) appointing persons who have experience in, or knowledge of—
    - (i) the provision of conveyancing services;
    - (ii) financial arrangements associated with conveyancing;
    - (iii) consumer affairs; or
    - (iv) commercial affairs; and
  - (b) securing, so far as is reasonably practicable, that the composition of the Board is such as to provide a proper balance between the interests of authorised practitioners and those who make use of their services.
- (4) The Board shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown.
- (5) The Board’s property shall not be regarded as property of, or held on behalf of, the Crown.
- (6) Neither the Board nor any of its staff or members shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.
- (7) Subsection (6) does not apply where the act or omission is shown to have been in bad faith.
- (8) The provisions of Schedule 5 shall have effect with respect to the constitution, procedure and powers of the Board and with respect to connected matters.

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### Textual Amendments

**F43** Words in s. 34 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

**I7** S. 34 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, art. 2, **Sch.**

## 35 Functions of the Board and financial provisions. **E+W**

- (1) It shall be the general duty of the Board—
  - (a) to seek to develop competition in the provision of conveyancing services;
  - (b) to supervise the activities of authorised practitioners in connection with the provision by them of conveyancing services.
- (2) In discharging the duty imposed on it by subsection (1)(b) the Board shall, in particular, make arrangements designed to enable it to ascertain whether authorised practitioners are complying with regulations made by the [F44Secretary of State] under section 40.
- (3) The Board shall have the specific functions conferred on it by or under this Act.
- (4) Where the [F44Secretary of State] refers to the Board any matter connected with—
  - (a) the provision of conveyancing services by authorised practitioners; or
  - (b) the organisation or practice of authorised practitioners,it shall be the duty of the Board to consider the matter and to report its conclusions to the [F44Secretary of State] .
- (5) Any report made under subsection (4) may be published by the [F44Secretary of State] in such manner as he thinks fit.
- (6) A copy of any guidance for authorised practitioners issued by the Board shall be sent by the Board to the [F44Secretary of State] .
- (7) Where it appears to the [F44Secretary of State] that there are grounds for believing that the Board has failed in any way to carry out any of its duties under this Act, he may give such directions to the Board as he considers appropriate.
- (8) The Board may make rules providing for the expenses which it incurs in exercising its functions, after taking into account any grants made to it under subsection (10) and any fees received by it, to be met by the imposition on each authorised practitioner of an annual levy calculated, and payable, in accordance with the provisions of the rules.
- (9) Any amount due to the Board from an authorised practitioner in respect of any levy payable by that practitioner under the rules shall be recoverable by the Board as a civil debt.
- (10) The [F44Secretary of State] may, with the approval of the Treasury, make grants to the Board towards meeting the expenses incurred, or to be incurred, by it in the discharge of its functions.
- (11) Any such grant may be made subject to such terms and conditions (including conditions as to repayment) as the [F44Secretary of State] sees fit to impose.

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- (12) Any sums required by the [<sup>F44</sup>Secretary of State] for making grants under subsection (10) shall be paid out of money provided by Parliament.
- (13) Any sums repaid by the Board in accordance with conditions imposed under subsection (11) shall be paid into the Consolidated Fund.

#### Textual Amendments

**F44** Words in s. 35 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

**I8** S. 35 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, art. 2 Sch.

### 36 Provision of conveyancing services by authorised practitioners. **E+W**

- (1) The restriction imposed by section 22 of the <sup>M6</sup>Solicitors Act 1974 (which has the effect of limiting the categories of person who may provide conveyancing services) shall not apply to any act done in connection with the provision of conveyancing services—
- by an individual at any time when he is an authorised practitioner;
  - by a body corporate at any time when it is an authorised practitioner;
  - by an officer or employee of a body corporate at any time when that body is an authorised practitioner; or
  - by a member or employee of an unincorporated association at any time when that association is an authorised practitioner.
- (2) In subsection (1)(c) and (d) “officer”, “employee” and “member” mean respectively an officer, employee or member who (at the time of the act in question) satisfies, and is acting in accordance with, regulations under section 40.
- (3) Any rule (however described) which is imposed by a professional or other body and which would, but for this subsection, result in restricting or preventing a qualified person from—
- providing any conveyancing services as an authorised practitioner;
  - acting as an employee of an authorised practitioner in connection with the provision of any such services; or
  - acting on behalf of an authorised practitioner in connection with the provision of any such services,
- shall be of no effect unless it is given partial effect by subsection (4)(a) or full effect by subsection (4)(b).
- (4) If the result mentioned in subsection (3) is not the main or only result of the rule in question, subsection (3)—
- shall apply only to the extent that the rule would have that result; but
  - shall not apply if the rule is reasonably required as a rule of general application for the purpose of regulating the conduct or practice of all members of that body.
- (5) Nothing in this section prevents a professional or other body from imposing a rule that any member of that body who is acting as mentioned in subsection (3)(c) may do so only on terms which allow him to give independent legal or financial advice

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to the person for whom conveyancing services are being provided by the authorised practitioner concerned.

- (6) In this section “qualified person” means—
- (a) any barrister, solicitor, duly certificated notary public or licensed conveyancer;
  - (b) any body recognised under section 9 of the <sup>M7</sup>Administration of Justice Act 1985 (incorporated practices); or
  - (c) any body recognised under section 32 of the Act of 1985 (incorporated bodies carrying on business of provision of conveyancing services).

#### Marginal Citations

**M6** 1974 c. 47.

**M7** 1985 c. 61.

### 37 Authorisation of practitioners. **E+W**

- (1) On an application duly made by a person who proposes to provide conveyancing services, the Board shall authorise that person to provide those services, if—
  - (a) it is satisfied that the applicant’s business is, and is likely to continue to be, carried on by fit and proper persons or, in the case of an application by an individual, that he is a fit and proper person; and
  - (b) it is of the opinion that the applicant will comply with the requirements mentioned in subsection (7).
- (2) Any such authorisation shall be given in writing and shall take effect on such date as the Board may specify.
- (3) A person so authorised is referred to in this Act as “an authorised practitioner”.
- (4) An application for authorisation must be made in accordance with rules made by the Board, with the approval of the [<sup>F45</sup>Secretary of State], for the purposes of this section.
- (5) On making any such application, the applicant shall pay to the Board such fee as may be specified in the rules.
- (6) The rules may, in particular, make provision—
  - (a) as to the form in which any application must be made; and
  - (b) for the furnishing by applicants of information required by the Board in connection with their applications.
- (7) The requirements are that the applicant—
  - (a) complies with any rules made by the Board and any regulations made under section 40, so far as applicable;
  - (b) ensures that satisfactory arrangements are at all times in force for covering adequately the risk of any claim made against the applicant in connection with the provision of conveyancing services provided by the applicant, however arising;
  - (c) maintains satisfactory procedures for—
    - (i) dealing with complaints made about any aspect of conveyancing services provided by the applicant; and

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- (ii) the payment of compensation;
  - (d) has in force satisfactory arrangements to protect the applicant's clients in the event of the applicant ceasing to provide conveyancing services;
  - (e) is a member of the Conveyancing Ombudsman Scheme.
- [<sup>F46</sup>(8) Subsection (8A) applies if the applicant is—
- (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect or carry out contracts of insurance; or
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) or (d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) either—
    - (i) to accept deposits, or
    - (ii) to effect or carry out contracts of insurance.
- (8A) The Board must have regard to the fact that the applicant has obtained that permission in determining whether it is satisfied as mentioned in subsection (1)(a).
- (8B) Subsection (8) must be read with—
- (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.]
- (9) The Board shall maintain a register of authorised practitioners which shall be open to inspection, at all reasonable times, without charge.
- (10) The [<sup>F45</sup>Secretary of State] may by order amend the provisions of subsection (7) by imposing any additional requirement or by varying or removing any requirement.

#### Textual Amendments

**F45** Words in s. 37 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)

**F46** S. 37(8)-(8B) substituted for s. 37(8) (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 321](#)

### 38 Refusal of approval and imposition of conditions. **E+W**

- (1) Where the Board proposes to refuse an application for authorisation under section 37 it shall give the applicant written notice of its proposal.
- (2) The notice shall give the Board's reasons for proposing to refuse the application and inform the applicant of the effect of subsection (7).
- (3) Any authorisation under section 37 may be given subject to the applicant complying with conditions imposed by the Board with a view to the protection of clients.
- (4) Any such conditions—
  - (a) may be imposed by the Board either when granting the application for authorisation or at any later time; and
  - (b) may be expressed to apply in relation to a specified part of the authorised practitioner's business (for example, to a specified branch or office).

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- (5) Before imposing any such conditions, the Board shall give written notice of its intention to do so to the applicant or (as the case may be) authorised practitioner concerned.
- (6) The notice shall inform the person to whom it is given of the effect of subsection (7).
- (7) Where a notice is served under subsection (1) or (5), it shall be the duty of the Board to consider any representations duly made by the person on whom the notice is served before determining whether to grant or refuse the application or to impose any of the proposed conditions.
- (8) For the purposes of subsection (7), representations are duly made if—
  - (a) they are made to the Board before the end of the period of 28 days beginning with the day on which the notice is served; and
  - (b) unless the Board directs otherwise in a particular case, are in writing.
- (9) Where the Board—
  - (a) proposes to impose a condition under this section on an authorised practitioner; and
  - (b) is satisfied that the circumstances of the case are exceptional and justify the condition taking effect immediately,it may disregard subsections (5) to (8) when imposing the condition.
- (10) If the Board refuses the application, or imposes any of the proposed conditions, it shall give the applicant notice in writing and, in the case of a refusal, the notice shall give the Board's reasons for refusing.
- (11) A notice under subsection (10) shall inform the applicant of his rights of appeal under section 41.
- (12) An authorised practitioner who fails to comply with a condition imposed on him under this section shall not thereby cease to be such a practitioner; but in such a case the Board may—
  - (a) impose additional, or substituted, conditions on him; or
  - (b) revoke or suspend his authorisation in accordance with rules made under section 39(1).

### **39 Revocation and suspension of authorisation. E+W**

- (1) The Board shall, with the approval of the <sup>F47</sup>[Secretary of State], make rules providing for the circumstances in which the authorisation of a person under section 37 may be revoked or suspended by the Board.
- (2) Where any such authorisation is revoked or suspended in accordance with the rules, the person concerned shall cease to be an authorised person for the purposes of this Act.
- (3) The rules may, in particular—
  - (a) provide for any suspension to be indefinite or for a period specified by the Board;
  - (b) provide for the total, or partial, lifting of any suspension in specified circumstances;
  - (c) provide for the publication by the Board of notice of any suspension or revocation under the rules;



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- (d) make transitional provision for dealing with any work in hand at the time when a revocation or suspension takes effect.
- (4) Where the Board—
- (a) revokes or suspends any authorisation in accordance with the rules; or
  - (b) lifts a suspension so imposed,
- it shall take such steps as are reasonably practicable to inform any body which has any regulatory functions in relation to that authorised practitioner of the action which it has taken.

#### Textual Amendments

**F47** Words in ss. 39–41 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)

#### 40 **Regulations about competence and conduct etc. of authorised practitioners.** **E** **+W**

- (1) The [<sup>F48</sup>Secretary of State] may by regulation make such provision as he considers expedient with a view to securing—
- (a) that authorised practitioners maintain satisfactory standards of competence and conduct in connection with the provision by them of conveyancing services;
  - (b) that in providing such services (and in particular in fixing their charges) they act in a manner which is consistent with the maintenance of fair competition between authorised practitioners and others providing conveyancing services; and
  - (c) that the interests of their clients are satisfactorily protected.
- (2) The regulations may, in particular, make provision—
- (a) designed to—
    - (i) provide for the efficient transaction of business;
    - (ii) avoid unnecessary delays;
  - (b) as to the supervision, by persons with such qualifications as may be prescribed, of such descriptions of work as may be prescribed;
  - (c) requiring authorised practitioners to arrange, so far as is reasonably practicable, for each transaction to be under the overall control of one individual;
  - (d) designed to avoid conflicts of interest;
  - (e) as to the terms and conditions on which authorised practitioners may provide conveyancing services;
  - (f) as to the information to be given to prospective clients, the manner in which or person by whom it is to be given and the circumstances in which it is to be given free of charge;
  - (g) as to the handling by authorised practitioners of their clients' money;
  - (h) as to the disclosure of and accounting for commissions.



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### Textual Amendments

**F48** Words in ss. 39-41 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

**I9** [S. 40](#) wholly in force at 1.4.1991 see [s. 124\(3\)](#) and [S.I. 1991/608](#), [art. 2](#).

## 41 The Conveyancing Appeal Tribunals. **E+W**

- (1) There shall be tribunals to be known as “Conveyancing Appeal Tribunals” which shall hear appeals under this section.
- (2) Any person who is aggrieved by any decision of the Board to—
  - (a) refuse an application for authorisation under section 37;
  - (b) suspend any authorisation given under section 37;
  - (c) refuse to lift such a suspension;
  - (d) revoke any such authorisation; or
  - (e) impose any condition under section 38,may appeal to a Conveyancing Appeal Tribunal.
- (3) No such decision of the Board shall have effect until—
  - (a) any appeal against it which is duly made under this section is disposed of; or
  - (b) the period within which an appeal may be made has expired without an appeal having been made.
- (4) Subsection (3) shall not apply where—
  - (a) the Board is satisfied that the circumstances of the case are exceptional and justify the decision in question taking effect immediately, or earlier than would otherwise be the case; and
  - (b) notifies the person concerned to that effect.
- (5) In this Part a Conveyancing Appeal Tribunal is referred to as “a Tribunal”.
- (6) A Tribunal shall consist of a Chairman and two other members appointed by the <sup>[F49]</sup>Secretary of State .
- (7) To be qualified for appointment as Chairman of a Tribunal, a person must have a 7 year general qualification (within the meaning of section 71).
- (8) Of the other two members of a Tribunal—
  - (a) one must have experience in, or knowledge of, the provision of conveyancing services; and
  - (b) the other must have experience in, or knowledge of, accountancy.
- (9) The <sup>[F49]</sup>Secretary of State] shall appoint a person to be Secretary to the Tribunals.
- (10) On receipt of notice of an appeal which is being made to a Tribunal, the Secretary shall inform the <sup>[F49]</sup>Secretary of State] and the <sup>[F49]</sup>Secretary of State] shall appoint a Tribunal to hear that appeal.
- (11) Schedule 6 shall have effect with respect to the Tribunals.

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### Textual Amendments

**F49** Words in ss. 39-41 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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  - (a) refuse an application for authorisation under section 37;
  - (b) suspend any authorisation given under section 37;
  - (c) refuse to lift such a suspension;
  - (d) revoke any such authorisation; or
  - (e) impose any condition under section 38,
 may appeal to a Conveyancing Appeal Tribunal.
- (3) No such decision of the Board shall have effect until—
  - (a) any appeal against it which is duly made under this section is disposed of; or
  - (b) the period within which an appeal may be made has expired without an appeal having been made.
- (4) Subsection (3) shall not apply where—
  - (a) the Board is satisfied that the circumstances of the case are exceptional and justify the decision in question taking effect immediately, or earlier than would otherwise be the case; and
  - (b) notifies the person concerned to that effect.
- (5) In this Part a Conveyancing Appeal Tribunal is referred to as “a Tribunal”.
- (6) A Tribunal shall consist of a Chairman and two other members appointed by the <sup>F49</sup>Secretary of State].
- <sup>F115</sup>(7) A person is eligible for appointment as Chairman of a Tribunal only if he satisfies the judicial-appointment eligibility condition on a 5-year basis.]
- (8) Of the other two members of a Tribunal—
  - (a) one must have experience in, or knowledge of, the provision of conveyancing services; and
  - (b) the other must have experience in, or knowledge of, accountancy.
- (9) The <sup>F49</sup>Secretary of State] shall appoint a person to be Secretary to the Tribunals.
- (10) On receipt of notice of an appeal which is being made to a Tribunal, the Secretary shall inform the <sup>F49</sup>Secretary of State] and the <sup>F49</sup>Secretary of State] shall appoint a Tribunal to hear that appeal.
- (11) Schedule 6 shall have effect with respect to the Tribunals.

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#### Textual Amendments

**F49** Words in ss. 39-41 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)

**F115** S. 41(7) substituted (21.7.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [ss. 50\(6\)](#), [148](#), [Sch. 10 para. 21](#); [S.I. 2008/1653](#), [art. 2\(d\)](#) (with arts. 3, 4)

### 42 Appeals from Tribunals on points of law. **E+W**

- (1) At the instance of a person aggrieved by a decision of a Tribunal, or at the instance of the Board, an appeal shall lie to the High Court on any question of law arising from that decision.
- (2) If, on an appeal to the High Court under this section, the court is of the opinion that the decision appealed against was wrong in law, it shall remit the matter for re-hearing and determination by the Tribunal concerned or, where it is not reasonably practicable for the case to be re-heard by that Tribunal, by another Tribunal.

<sup>F50</sup>(3) .....

#### Textual Amendments

**F50** S. 42(3) repealed (27.9.1999) by [1999 c. 22](#), [ss. 106](#), [108\(3\)\(f\)](#), [Sch. 15 Pt. III](#) (with [Sch. 14 paras. 7\(2\)](#), [36\(9\)](#))

### 43 The Conveyancing Ombudsman Scheme. **E+W**

- (1) The Board shall, with the approval of the [<sup>F51</sup>Secretary of State], make rules establishing a scheme (to be known as “the Conveyancing Ombudsman Scheme”) for the investigation, by a person appointed by the Board with the approval of the [<sup>F51</sup>Secretary of State], of complaints against authorised practitioners in connection with the provision by them of conveyancing services.
- (2) The person so appointed shall be known as “the Conveyancing Ombudsman”.
- (3) No person shall be appointed to be the Conveyancing Ombudsman if he is, or has at any time within the period of three years ending with his appointment been—
  - (a) involved in any capacity in the provision by an authorised practitioner of conveyancing services; or
  - (b) a member of the Board.
- (4) Schedule 7 shall have effect for the purpose of supplementing this section.
- (5) A person may be appointed to be both a member of the staff of the Board and a member of the staff of the Conveyancing Ombudsman.
- (6) The Conveyancing Ombudsman may not make any charge for the use of his services.
- (7) His expenses under the Scheme shall be defrayed by the Board and shall rank as expenses of the Board for the purposes of section 35.
- (8) The Conveyancing Ombudsman shall submit to the Board an annual report on the discharge of his functions.

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- (9) The Board shall, when submitting its own annual report to the [<sup>F51</sup>Secretary of State] , send him a copy of the Conveyancing Ombudsman’s annual report.
- (10) When laying the Board’s annual report before Parliament, the [<sup>F51</sup>Secretary of State] shall also lay before Parliament a copy of the Conveyancing Ombudsman’s report.
- (11) It shall be the duty of the Conveyancing Ombudsman to inform the Board of any evidence which comes to his attention suggesting that there has been, or may have been, a breach of any of the rules made under subsection (1) or of the regulations made under section 40.
- (12) The Board may—
  - (a) pay such remuneration and travelling and other allowances to the Conveyancing Ombudsman as may be determined by the Board;
  - (b) pay such pension, allowances or gratuities to or in respect of the Conveyancing Ombudsman as may be so determined; and
  - (c) if the Conveyancing Ombudsman ceases to hold office and it appears to the Board that there are special circumstances which make it right that he should receive compensation, pay him such sum as may be so determined.

#### Textual Amendments

**F51** Words in ss. 43-45 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)

#### 44 Compensation scheme. **E+W**

- (1) The Board may, with the approval of the [<sup>F52</sup>Secretary of State] , make rules establishing a scheme for compensating persons who have suffered loss in consequence of dishonesty on the part of authorised practitioners or their employees.
- (2) The rules may, in particular—
  - (a) provide for the establishment and functioning of an independent body (whether corporate or unincorporate) to administer the scheme and, subject to the rules, determine and regulate any matter relating to its operation;
  - (b) establish a fund out of which compensation is to be paid;
  - (c) provide for the levying of contributions from authorised practitioners and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
  - (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified; and
  - (e) contain incidental and supplementary provisions.

#### Textual Amendments

**F52** Words in ss. 43-45 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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#### 45 Advisory and supervisory functions of <sup>F53</sup>Office of Fair Trading] . **E+W**

- (1) Where the <sup>F54</sup>Secretary of State] is considering whether—
  - (a) to approve any rules which the Board is proposing to make; or
  - (b) to make any regulations under section 40,he shall first send a copy of the proposed rules or regulations to the <sup>F55</sup>OFT].
- (2) The <sup>F55</sup>OFT] shall consider whether the proposed rules or regulations would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the <sup>F55</sup>OFT] has completed <sup>F56</sup>its] consideration <sup>F56</sup>it] shall give such advice to the <sup>F54</sup>Secretary of State] as <sup>F56</sup>it] thinks fit.
- (4) The <sup>F55</sup>OFT] shall keep under review the rules made by the Board and the regulations made by the <sup>F54</sup>Secretary of State] under section 40.
- (5) If the <sup>F55</sup>OFT] is of the opinion that any such rule or regulation has, or is likely to have, the effect of restricting, distorting or preventing competition to any significant extent, <sup>F57</sup>it] shall report <sup>F57</sup>its] opinion to the <sup>F54</sup>Secretary of State] .
- (6) Any report under subsection (5) shall state what, in the <sup>F58</sup>OFT's] opinion, is the effect of the rule or regulation or its likely effect.
- (7) The <sup>F55</sup>OFT] may publish any advice given by <sup>F59</sup>it] under subsection (3) or report made by <sup>F59</sup>it] under subsection (5).
- (8) The <sup>F55</sup>OFT] shall, so far as practicable, exclude from anything published under subsection (7) any matter—
  - (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the <sup>F60</sup>its] opinion, seriously and prejudicially affect the interests of that person.

#### Textual Amendments

- F53** 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)
- F54** Words in ss. 43–45 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)
- F55** Words in s. 45 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F56** Words in s. 45(3) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F57** Words in s. 45(5) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(c); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F58** Word in s. 45(6) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(d); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F59** Words in s. 45(7) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(e); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F60** Word in s. 45(8)(b) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(f); S.I. 2003/766, art. 2, Sch. (with art. 3)

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#### 46 Investigatory powers of [<sup>F61</sup>OFT]. **E+W**

- (1) For the purpose of investigating any matter under section 45, the [<sup>F62</sup>OFT] may by notice in writing—
  - (a) require any person to produce to [<sup>F62</sup>it] or to any person appointed by [<sup>F62</sup>it] for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person’s custody or under that person’s control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to [<sup>F62</sup>it] (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court.
- (3) <sup>F63</sup> .....

##### Textual Amendments

- F61** 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)
- F62** Words in s. 46(1) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(3)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F63** S. 46(3) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(3)(c), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3)

#### [<sup>F64</sup>46A Enforcement of notices under section 46 **E+W**

- (1) The High Court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 46(1).
- (2) An application under subsection (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under subsection (1), the High Court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Subsections (5) and (6) apply where the High Court is satisfied, after hearing any witnesses and statements as mentioned in subsection (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under section 46(1).
- (5) The High Court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the High Court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.]



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#### Textual Amendments

**F64** Ss. 46A, 46B inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 23(4); S.I. 2003/766, art. 2, Sch. (with art. 3)

### [<sup>F65</sup> **46B** Altering, etc. documents required to be produced under section 46 **E+W**]

- (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under section 46(1).
- (2) A person who commits an offence under subsection (1) shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

#### Textual Amendments

**F65** Ss. 46A, 46B inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 23(4); S.I. 2003/766, art. 2, Sch. (with art. 3)

### **47** Power to obtain information and require production of documents. **E+W**

- (1) The Board may serve a notice on any—
  - (a) authorised practitioner;
  - (b) officer or employee of an authorised practitioner;
  - (c) qualified person who is acting, or has acted, on behalf of an authorised practitioner; or
  - (d) officer or employee of such a qualified person,requiring him to provide the Board (within such time and at such place as may be specified in the notice) with such document, or documents of such a description, or with such information, as may be so specified.
- (2) The Board shall not exercise its powers under subsection (1) except for the purpose of obtaining such information as it thinks reasonably necessary in connection with the discharge of any of its functions.
- (3) The Board's power under this section to require a person to produce any document includes power—
  - (a) if the document is produced, to take copies of it or extracts from it and to require that person, or any other person who is or was a director or officer of, or is or was at any time employed by or acting as an employee of, the practitioner concerned, to provide an explanation of the document;
  - (b) if the document is not produced, to require the person who was required to produce it to state, to the best of his knowledge and belief, where it is.
- (4) The Board's power under this section may be exercised in relation to a person who falls within subsection (1)(c) or (d) only in relation to the provision of conveyancing services on behalf of the authorised practitioner concerned.

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- (5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.
- (6) Any person who, in response to any requirement imposed on him under this section, knowingly or recklessly provides any information or explanation or makes any statement which is false or misleading in a material particular shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Where any person from whom production of a document is required under this section claims a lien on the document, the production of it shall be without prejudice to the lien.
- (8) Nothing in this section shall compel—
  - (a) the production of a document containing a communication which is privileged from disclosure in legal proceedings in England and Wales; or
  - (b) the furnishing of information contained in such a communication.
- (9) In this section “document” includes any information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy in legible form.

#### **48 Investigations on behalf of the Board. E+W**

- (1) If it appears to the Board desirable to do so—
  - (a) in connection with the discharge of any of its functions; and
  - (b) in the interests of customers or potential customers of an authorised practitioner,
 it may appoint one or more competent persons (“the investigators”) to investigate and report to it on the state and conduct of the affairs of that authorised practitioner.
- (2) The Board shall give written notice of any such appointment to the authorised practitioner concerned.
- (3) If the investigators think it necessary for the purposes of their investigation, they may also investigate the affairs of any qualified person who is acting, or has acted, on behalf of the authorised practitioner (so far as concerns the provision of conveyancing services on behalf of the authorised practitioner), after giving the qualified person written notice of their investigation.
- <sup>F66</sup>(4) Subsection (4A) applies if an authorised practitioner whose affairs are under investigation is—
  - (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect or carry out contracts of insurance; or
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) or (d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) either—
    - (i) to accept deposits, or
    - (ii) to effect or carry out contracts of insurance.



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- (4A) The [<sup>F67</sup>Secretary of State] may give a direction with a view to limiting the scope of the investigation to matters concerned with the provision of conveyancing services.
- (4B) Subsection (4) must be read with—
- (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.]
- (5) Any such direction may be general or be given with respect to a particular investigation.
- (6) It shall be the duty of every person whose affairs are being investigated and of any officer or employee of his—
- (a) to produce to the investigators, within such time and at such place as they may reasonably require, all documents relating to the provision of conveyancing services by the practitioner which are in that person's custody or power;
  - (b) to provide the investigators, within such time as they may require, with such information as they may reasonably require with respect to the provision of those services; and
  - (c) to give the investigators such assistance in connection with the investigation as he is reasonably able to give.
- (7) The investigators may take copies of, or extracts from, any document produced to them under subsection (6).
- (8) This section applies in relation to a former authorised practitioner or former qualified person as it applies in relation to an authorised practitioner or qualified person.
- (9) Any person who, without reasonable excuse, fails to produce any document, or provide any information, which it is his duty to produce under subsection (6) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.
- (10) Any person who, in response to any requirement imposed on him under this section, knowingly or recklessly provides any information or explanation or makes any statement which is false or misleading in a material particular shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (11) Nothing in this section shall compel the production by an authorised practitioner or qualified person acting on his behalf of a document containing a privileged communication made by him or to him in that capacity.

#### Textual Amendments

**F66** S. 48(4)-(4B) substituted for s. 48(4) (1.12.2001) by S.I. 2001/3649, arts. 1, 322

**F67** Words in s. 48 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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#### 49 Restrictions on disclosure of information. **E+W**

- (1) Subject to section 50, restricted information which relates to the business or other affairs of any person shall not be disclosed—
  - (a) by the Board or any member of its staff;
  - (b) by any person appointed as an investigator under section 48 or any officer or servant of his; or
  - (c) by any person obtaining it directly or indirectly from a person mentioned in paragraph (a) or (b),
 without the consent of the person from whom it was obtained and, if they are different, the person to whom it relates.
- (2) Subject to subsection (3), information is restricted information for the purposes of this section if it was obtained (whether or not in response to any requirement that it be provided) for the purposes of, or in the discharge of functions under, any provision made by or under this Act.
- (3) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not prevented by this section.
- (4) Any person who contravenes this section shall be guilty of an offence and 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 a fine not exceeding the statutory maximum.

#### 50 Exceptions from restrictions on disclosure. **E+W**

- (1) Section 49 shall not prevent the disclosure of information—
  - (a) with a view to the institution, or otherwise for the purposes, of any criminal proceedings;
  - (b) with a view to the institution, or otherwise for the purposes, of any civil proceedings arising under or by virtue of this Act;
  - (c) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (d) in pursuance of any Community obligation.
- (2) Section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting—
  - (a) <sup>F68</sup> . . . . .
  - (b) the Board to discharge any of its functions;
  - (c) the Law Society, the General Council of the Bar, the Council for Licensed Conveyancers or the Faculty Office of the Archbishop of Canterbury to discharge any of its functions;
  - <sup>F69</sup>(d) . . . . .
  - <sup>F70</sup>(e) a recognised investment exchange or a recognised clearing house (both within the meaning given by section 285 of the Financial Services and Markets Act 2000) to discharge any of its functions;]
  - (f) the Bank of England to discharge any of its functions;

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- [<sup>F71</sup>(fa) the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986 or under the Financial Services and Markets Act 2000;
- (g) the Secretary of State or the Treasury to discharge any function conferred by this Act, the Financial Services and Markets Act 2000 or any enactment relating to competition, companies or insolvency;
- (h) the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 to discharge its functions under that Part;
- (ha) a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation to discharge his functions;
- (hb) any inspector appointed by the Secretary of State under this Act or any enactment relating to competition, companies or insolvency to discharge his functions under that enactment;
- (hc) a body designated under section 326(1) of the Financial Services and Markets Act 2000 to discharge its functions in its capacity as a body designated under that section;]
  - (i) an official receiver to discharge any of his functions under any enactment relating to insolvency;
  - (j) a body which is a recognised professional body under section 391 of the <sup>M8</sup>Insolvency Act 1986 to discharge any of its functions as such a body;
- <sup>F72</sup>(k) .....
- <sup>F69</sup>(l) .....
- (m) the [<sup>F73</sup>OFT to discharge any of its] functions under—
  - (i) this Act;
  - (ii) the <sup>M9</sup>Fair Trading Act 1973 <sup>F74</sup> . . . . ;
  - (iii) the <sup>M10</sup>Consumer Credit Act 1974;
  - <sup>F75</sup>(iv) .....
  - (v) the <sup>M11</sup>Estate Agents Act 1979;
  - (vi) the <sup>M12</sup>Competition Act 1980;
  - <sup>F76</sup>(vii) .....
  - (viii) <sup>F77</sup> .....
  - [<sup>F78</sup>(ix) the Competition Act 1998;]
  - [<sup>F79</sup>(x) the Financial Services and Markets Act 2000;]
  - [<sup>F80</sup>[<sup>F81</sup>(xi)] the Enterprise Act 2002;]
  - [<sup>F82</sup>(xii) the Business Protection from Misleading Marketing Regulations 2008;
  - (xiii) the Consumer Protection from Unfair Trading Regulations 2008;]

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- (n) the [<sup>F83</sup>Competition Commission] to discharge any of its functions under the Fair Trading Act 1973 and [<sup>F83</sup>, the Competition Act 1980 and the Competition Act 1998];
  - (o) the Scottish Conveyancing and Executry Services Board to discharge any of its functions;
  - (p) an authority in a country or territory outside the United Kingdom to discharge any functions corresponding to—
    - (i) the functions of the Board, <sup>F84</sup>. . . or the [<sup>F85</sup>Financial Services Authority]; or
    - (ii) those functions of the Secretary of State mentioned in paragraph (g);
  - (q) the Insolvency Practitioners Tribunal to discharge any of its functions under the Insolvency Act 1986;
  - [<sup>F86</sup>(r) the Financial Services Tribunal to discharge any function it has in relation to proceedings before it by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
  - (s) the Financial Services and Markets Tribunal to discharge any of its functions.]
  - [<sup>F87</sup>(t) the Pensions Regulator Tribunal to discharge any of its functions.]
- (3) Subject to subsection (4), section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the [<sup>F88</sup>Secretary of State] to discharge any functions which are specified in the order.
- (4) An order under subsection (3) designating an authority for the purposes of this section may—
- (a) impose conditions subject to which the disclosure of information is permitted by subsection (3); and
  - (b) otherwise restrict the circumstances in which disclosure is permitted.
- (5) Where information has been disclosed by one person (“the first person”) to another, by virtue of subsection (2), section 49 shall not prevent that other person from disclosing that information to any person to whom it could have been disclosed by the first person by virtue of subsection (2).
- (6) The [<sup>F88</sup>Secretary of State] may by order modify the application of any provision of this section so as—
- (a) to prevent the disclosure of information by virtue of that provision; or
  - (b) to restrict the extent to which disclosure of information is permitted by virtue of that provision.

#### Textual Amendments

- F68** S. 50(2)(a) repealed (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003](#) (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(2)** (with arts. 6, 8)
- F69** S. 50(2)(d)(l) repealed (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 323(2)(a)
- F70** S. 50(2)(e) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 323(3)
- F71** S. 50(2)(fa)-(hc) substituted for s. 50(2)(fa)-(h) (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 323(4)
- F72** S. 50(2)(k) omitted (30.4.2001) by virtue of [S.I. 2001/1283](#), **art. 3(5)**
- F73** Words in s. 50(2)(m) substituted (1.4.2003) by [2002 c. 40](#), ss. 278, 279, [Sch. 25](#), para. 23(5)(a); [S.I. 2003/766](#), **art. 2**, [Sch.](#) (with [art. 3](#))
- F74** Words in s. 50(2)(m)(ii) repealed (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008](#) (S.I. 2008/1277), reg. 30(3), **Sch. 4 Pt. 1** (with reg. 28(2)(3))

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- F75** S. 50(2)(m)(iv) repealed (1.3.2000) by S.I. 2000/311, **art. 25**
- F76** S. 50(2)(m)(vii) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(2)(b)**
- F77** S. 50(2)(m)(viii) repealed (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), regs. 30(1)(3), Sch. 2 para. 48(a), **Sch. 4 Pt. 1** (with reg. 28(2)(3))
- F78** S. 50(2)(m)(ix) inserted (1.4.1999) by S.I. 1999/506, **art. 28(a)**
- F79** S. 50(2)(m)(x) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(5)**
- F80** S. 50(2)(m)(x) inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(b); S.I. 2003/766, **art. 2, Sch.** (with art. 3)
- F81** S. 50(2)(m)(x) renumbered (20.6.2003) as s. 50(2)(m)(xi) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 13(2)**
- F82** S. 50(2)(m)(xii)(xiii) inserted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(1), **Sch. 2 para. 48(b)** (with reg. 28(2)(3))
- F83** Words in s. 50(2)(n) substituted (1.4.1999) by S.I. 1999/506, **art. 28(b)**
- F84** Words in s. 50(2)(p)(i) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(2)(c)**
- F85** Words in s. 50(2)(p)(i) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 67(b)**; S.I. 1998/1120, **art. 2**
- F86** S. 50(2)(r)(s) substituted for s. 50(2)(r) (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(6)**
- F87** S. 50(2)(t) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322(1), **Sch. 4 para. 21** (with s. 313); S.I. 2005/275, **art. 2(7)(12)**, Sch. Pt. 7
- F88** Words in s. 50(3)(6) 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)

#### Marginal Citations

- M8** 1986 c. 45.
- M9** 1973 c. 41.
- M10** 1974 c. 39.
- M11** 1979 c. 38.
- M12** 1980 c. 21.

## 50 Exceptions from restrictions on disclosure. **E+W**

- (1) Section 49 shall not prevent the disclosure of information—
  - (a) with a view to the institution, or otherwise for the purposes, of any criminal proceedings;
  - (b) with a view to the institution, or otherwise for the purposes, of any civil proceedings arising under or by virtue of this Act;
  - (c) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (d) in pursuance of any Community obligation.
- (2) Section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting—
  - (a) <sup>F68</sup> .....
  - (b) the Board to discharge any of its functions;
  - (c) the Law Society, the General Council of the Bar, the Council for Licensed Conveyancers or the Faculty Office of the Archbishop of Canterbury to discharge any of its functions;
  - <sup>F69</sup>(d) .....

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- [<sup>F70</sup>(e) a recognised investment exchange or a recognised clearing house (both within the meaning given by section 285 of the Financial Services and Markets Act 2000) to discharge any of its functions;]
- (f) the Bank of England to discharge any of its functions;
- [<sup>F71</sup>(fa) the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986 or under the Financial Services and Markets Act 2000;
- (g) the Secretary of State or the Treasury to discharge any function conferred by this Act, the Financial Services and Markets Act 2000 or any enactment relating to competition, companies or insolvency;
- (h) the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 to discharge its functions under that Part;
- (ha) a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
 to conduct an investigation to discharge his functions;
- (hb) any inspector appointed by the Secretary of State under this Act or any enactment relating to competition, companies or insolvency to discharge his functions under that enactment;
- (hc) a body designated under section 326(1) of the Financial Services and Markets Act 2000 to discharge its functions in its capacity as a body designated under that section;]
- (i) an official receiver to discharge any of his functions under any enactment relating to insolvency;
- (j) a body which is a recognised professional body under section 391 of the <sup>M8</sup>Insolvency Act 1986 to discharge any of its functions as such a body;
- <sup>F72</sup>(k) .....
- <sup>F69</sup>(l) .....
- (m) the [<sup>F73</sup>OFT to discharge any of its] functions under—
  - (i) this Act;
  - (ii) the <sup>M9</sup>Fair Trading Act 1973 (other than Part II);
  - (iii) the <sup>M10</sup>Consumer Credit Act 1974;
  - <sup>F75</sup>(iv) .....
  - (v) the <sup>M11</sup>Estate Agents Act 1979;
  - (vi) the <sup>M12</sup>Competition Act 1980;
  - <sup>F76</sup>(vii) .....
  - (viii) the <sup>M40</sup>Control of Misleading Advertisements Regulations 1988;
  - [<sup>F78</sup>(ix) the Competition Act 1998;]
  - [<sup>F79</sup>(x) the Financial Services and Markets Act 2000;]
  - [<sup>F80</sup>[<sup>F81</sup>(xi)] the Enterprise Act 2002;]

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- (n) the [<sup>F83</sup>Competition Commission] to discharge any of its functions under the Fair Trading Act 1973 and [<sup>F83</sup>, the Competition Act 1980 and the Competition Act 1998];
  - (o) the Scottish Conveyancing and Executry Services Board to discharge any of its functions;
  - (p) an authority in a country or territory outside the United Kingdom to discharge any functions corresponding to—
    - (i) the functions of the Board, <sup>F84</sup>. . . or the [<sup>F85</sup>Financial Services Authority]; or
    - (ii) those functions of the Secretary of State mentioned in paragraph (g);
  - (q) the Insolvency Practitioners Tribunal to discharge any of its functions under the Insolvency Act 1986;
  - [<sup>F86</sup>(r) the Financial Services Tribunal to discharge any function it has in relation to proceedings before it by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
  - (s) the Financial Services and Markets Tribunal to discharge any of its functions.]
  - [<sup>F87</sup>(t) the Pensions Regulator Tribunal to discharge any of its functions.]
- (3) Subject to subsection (4), section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the [<sup>F88</sup>Secretary of State] to discharge any functions which are specified in the order.
- (4) An order under subsection (3) designating an authority for the purposes of this section may—
- (a) impose conditions subject to which the disclosure of information is permitted by subsection (3); and
  - (b) otherwise restrict the circumstances in which disclosure is permitted.
- (5) Where information has been disclosed by one person (“the first person”) to another, by virtue of subsection (2), section 49 shall not prevent that other person from disclosing that information to any person to whom it could have been disclosed by the first person by virtue of subsection (2).
- (6) The [<sup>F88</sup>Secretary of State] may by order modify the application of any provision of this section so as—
- (a) to prevent the disclosure of information by virtue of that provision; or
  - (b) to restrict the extent to which disclosure of information is permitted by virtue of that provision.

#### Textual Amendments

- F68** S. 50(2)(a) repealed (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 8(2) (with arts. 6, 8)
- F69** S. 50(2)(d)(l) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 323(2)(a)
- F70** S. 50(2)(e) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 323(3)
- F71** S. 50(2)(fa)-(hc) substituted for s. 50(2)(fa)-(h) (1.12.2001) by S.I. 2001/3649, arts. 1, 323(4)
- F72** S. 50(2)(k) omitted (30.4.2001) by virtue of S.I. 2001/1283, art. 3(5)
- F73** Words in s. 50(2)(m) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F75** S. 50(2)(m)(iv) repealed (1.3.2000) by S.I. 2000/311, art. 25
- F76** S. 50(2)(m)(vii) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 323(2)(b)



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- F78** S. 50(2)(m)(ix) inserted (1.4.1999) by S.I. 1999/506, **art. 28(a)**
- F79** S. 50(2)(m)(x) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(5)**
- F80** S. 50(2)(m)(x) inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(b); S.I. 2003/766, **art. 2, Sch. (with art. 3)**
- F81** S. 50(2)(m)(x) renumbered (20.6.2003) as s. 50(2)(m)(xi) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), **art. 2, Sch. para. 13(2)**
- F83** Words in s. 50(2)(n) substituted (1.4.1999) by S.I. 1999/506, **art. 28(b)**
- F84** Words in s. 50(2)(p)(i) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(2)(c)**
- F85** Words in s. 50(2)(p)(i) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 67(b); S.I. 1998/1120, art. 2**
- F86** S. 50(2)(r)(s) substituted for s. 50(2)(r) (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(6)**
- F87** S. 50(2)(t) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322(1), **Sch. 4 para. 21 (with s. 313); S.I. 2005/275, art. 2(7)(12), Sch. Pt. 7**
- F88** Words in s. 50(3)(6) 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)**

#### Marginal Citations

- M8** 1986 c. 45.
- M9** 1973 c. 41.
- M10** 1974 c. 39.
- M11** 1979 c. 38.
- M12** 1980 c. 21.
- M40** S.I. 1988/915.

## 51 Board's intervention powers. **E+W**

- (1) The powers conferred on the Board by this section may be exercised if it appears to the Board to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an authorised practitioner.
- (2) The Board may, in particular, exercise any such power where it appears to it—
  - (a) that an authorised practitioner who is an individual is no longer fit to provide conveyancing services;
  - (b) that any person carrying on the business of an authorised practitioner is not fit to provide such services; or
  - (c) that an authorised practitioner has failed, or is likely to fail, to comply with any regulation made under section 40.
- (3) The Board may direct the authorised practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
  - (a) any assets belonging to any client of the authorised practitioner and held by or under the control of the authorised practitioner in connection with his business as an authorised practitioner; or
  - (b) any assets of such a kind which are specified in the direction.
- (4) The Board may direct the authorised practitioner to transfer to the Board, or to such persons ("the trustees") as may be specified in the direction—
  - (a) all assets belonging to any client of that practitioner and held by or under his control in connection with his business as an authorised practitioner; or
  - (b) any assets of such a kind which are specified in the direction.



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- (5) Any assets which have been transferred as a result of a direction given under subsection (4) shall be held by the Board, or by the trustees, on trust for the client concerned.
- (6) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the Board.
- (7) In this section—
  - “assets” includes any sum of money held (in whatever form and whether or not in any bank, building society or other account) by the authorised practitioner or on behalf of the client concerned and any instrument or other document belonging to that client; and
  - “authorised practitioner” includes a person whose authorisation has been suspended or revoked under section 39.
- (8) Any direction under this section—
  - (a) must be given in writing;
  - (b) must state the reason why it is being given;
  - (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the authorised practitioner);
  - (d) may be varied or revoked by a further direction given by the Board.

## 52 Board’s intervention powers: supplemental provisions. **E+W**

- (1) In this section—
  - “the intervention powers” means the powers given to the Board by section 51; and
  - “a direction” means a direction given under that section.
- (2) An authorised practitioner to whom a direction is given may appeal against it to a Conveyancing Appeal Tribunal.
- (3) Any authorised practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to appeal).
- (4) If, on an application made to the High Court by the Board, the court is satisfied—
  - (a) that an authorised practitioner has failed, within a reasonable time, to comply with any direction given to it; or
  - (b) that there is a reasonable likelihood that an authorised practitioner will so fail, it may make an order requiring the authorised practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.
- <sup>[F89]</sup>(5) Subsection (6) applies to an authorised practitioner who—
  - (a) has permission under any provision of the Financial Services and Markets Act 2000 to carry on a regulated activity; or
  - (b) is an appointed representative of a person with such permission;and “regulated activity” and “appointed representative” have the meaning given in that Act.

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- <sup>F89</sup>(6) In relation to an authorised practitioner to whom this subsection applies, the powers of intervention may be exercised only after consultation with the Financial Services Authority.]

#### Textual Amendments

**F89** S. 52(5)(6) substituted for s. 52(5)-(8) (1.12.2001) by S.I. 2001/3649, arts. 1, 324

### *Licensed conveyancers*

#### **53 The Council for Licensed Conveyancers.** **E+W**

- (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,
 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 [<sup>F90</sup>Schedule 4] for authorisation or an application under Schedule 9 for approval; or

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- (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 [F91Secretary of State] 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 [F91Secretary of State] 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) the management and control by licensed conveyancers (or by licensed conveyancers together with persons who are not licensed conveyancers) of bodies corporate carrying on businesses which include the provision of advocacy, litigation or probate services; and  
(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

**F90** 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)**

**F91** Words in s. 53 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

**I10** 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. **E+W**

- (1) In section 23 of the <sup>M13</sup>Solicitors Act 1974 (preparation of papers for probate etc. by unqualified persons), the following subsections shall be substituted for subsections (2) and (3)—

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“(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>F92</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>F93</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>F94</sup>Secretary of State] with respect to matters relating to such complaints.

[<sup>F95</sup>(2AB) Paragraphs (e) and (f) of subsection (2) must be read with—

- (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.

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- (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>M14</sup>Supreme Court 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—
- 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
  - 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—
- on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
  - 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

- F92** 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)
- F93** 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)
- F94** 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)
- F95** S. 54(1): after the inserted para. (2A), para. (2AB) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 325(4)

#### Marginal Citations

- M13** 1974 c. 47.
- M14** 1981 c. 54.

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

- (1) The provisions of section 23(1) of the <sup>M15</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.

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- (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>F96</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>F96</sup>Secretary of State] under Schedule 9.
- (4) The approval of any body under Schedule 9 may be revoked under that Schedule.

#### Textual Amendments

**F96** 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

**M15** 1974 c. 47.

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

- (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>M16</sup>Commissioners for Oaths Act 1889;
  - “justice” means a justice of the peace;

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“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>M17</sup>Supreme Court Act 1981.

#### Commencement Information

**II1** S. 56 wholly in force at 1.7.1991 see s. 124(3) and S.I. 1991/1364, art. 2, sch.

#### Marginal Citations

**M16** 1889 c. 10.

**M17** 1981 c. 54.

## 57 Notaries **E+W**

- (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>M18</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);
  - (b) section 1 of the <sup>M19</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>M20</sup>Public Notaries Act 1843 (which reduced the period of apprenticeship to five years);
  - (e) section 37 of the <sup>M21</sup>Welsh Church Act 1914 (appointment of public notaries to practise within particular districts in Wales); and
  - (f) section 29 of the <sup>M22</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;



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- (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>M23</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—
  - “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>M24</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>F97</sup>(11) . . . . .

#### Textual Amendments

**F97** 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)**

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### Commencement Information

**I12** S. 57 wholly in force at 1.7.1991 see s. 124(3) and S.I. 1991/1364, art. 2, Sch.

### Marginal Citations

**M18** 1801 c. 79.

**M19** 1833 c. 70.

**M20** 1843 c. 90.

**M21** 1914 c. 91.

**M22** 1969 c. 58.

**M23** 1974 c. 47.

**M24** 1533 c. 21.

### Miscellaneous

#### [<sup>F98</sup>58 Conditional fee agreements. E+W

- (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 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>F99</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>F99</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>F99</sup>Lord Chancellor].
- (5) If a conditional fee agreement is an agreement to which section 57 of the <sup>M25</sup>Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.]

**Status:** Point in time view as at 12/01/2006. 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 05 July 2024. 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. (See end of Document for details)

### Textual Amendments

- F98** 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)
- F99** 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

- M25** 1974 c.47.

## <sup>F100</sup>58A Conditional fee agreements: supplementary. **E+W**

- (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>M26</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—
- (a) the <sup>M27</sup>Matrimonial Causes Act 1973;
  - [<sup>F101</sup>(b) the Adoption and Children Act 2002;]
  - (c) the <sup>M28</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
  - (d) Part III of the <sup>M29</sup>Matrimonial and Family Proceedings Act 1984;
  - (e) Parts I, II and IV of the <sup>M30</sup>Children Act 1989;
  - (f) Part IV of the <sup>M31</sup>Family Law Act 1996; <sup>F102</sup> . . .
  - [<sup>F103</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>F104</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).

**Status:** Point in time view as at 12/01/2006. 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 05 July 2024. 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. (See end of Document for details)

- (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>F104</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

- F100** 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)
- F101** 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
- F102** 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
- F103** 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
- F104** 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

- M26** 1990 c.43.
- M27** 1973 c.18.
- M28** 1978 c.22.
- M29** 1984 c.42.
- M30** 1989 c.41.
- M31** 1996 c.27.

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VALID FROM 12/11/2009

**[<sup>F105</sup>58A] Damages-based agreements relating to employment matters E+W**

- (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.
- (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).

**Status:** Point in time view as at 12/01/2006. 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 05 July 2024. 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. (See end of Document for details)

(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

**F105** 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>F106</sup>58B Litigation funding agreements. **E+W**

- (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;
  - (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.

*Status:* Point in time view as at 12/01/2006. 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 05 July 2024. 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. (See end of Document for details)

- (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**

**F106** 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)

<sup>F107</sup>59 ..... **E+W**

**Textual Amendments**

**F107** 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)

**60 Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales. **E+W****

- (1) The [<sup>F108</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>F108</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.



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- (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>F108</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 solicitor of the Supreme Court of Northern Ireland or an advocate or solicitor in Scotland; and
  - (b) any person falling within such category as may be prescribed.

#### Textual Amendments

**F108** 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)

VALID FROM 01/01/2010

#### [<sup>F109</sup>60A Procedural requirements relating to recommendations for the purposes of section 60 **E+W**

- (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.]

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#### Textual Amendments

**F109** 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. **E+W**

- (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. **E+W**

**F110**  
.....

#### Textual Amendments

**F110** 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. **E+W**

- (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;
  - (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>M32</sup>Solicitors Act 1974 (unqualified person not to prepare probate papers etc.) does not apply.

#### Commencement Information

**I13** 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

**M32** 1974 c. 47.

**Status:** Point in time view as at 12/01/2006. 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 05 July 2024. 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. (See end of Document for details)

**64 Discrimination by, or in relation to, barristers. E+W**

- (1) The following shall be inserted in the <sup>M33</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
  - “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>M34</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

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- (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

M33 1975 c. 65.

M34 1976 c. 74.

## 65 Discrimination by, or in relation to, advocates. **E+W+S**

- (1) The following shall be inserted in the <sup>M35</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;

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- (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>M36</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;
  - (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.

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(5) This section does not apply to England and Wales.”.

#### Marginal Citations

**M35** 1975 c. 65.

**M36** 1976 c. 74.

## 66 Multi-disciplinary and multi-national practices. **E+W**

- (1) Section 39 of the <sup>M37</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>M38</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.

#### Marginal Citations

**M37** 1974 c. 47.

**M38** 1801 c. 79.

## <sup>F111</sup>67 ..... **E+W**

#### Textual Amendments

**F111** 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. **E+W**

- (1) Section 22 of the <sup>M39</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)—

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- “(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

M39 1974 c. 47

## 69 Exemption from liability for damages etc. **E+W**

- (1) Neither the [<sup>F112</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>F112</sup>Secretary of State], a designated judge or the [<sup>F113</sup>OFT] of any advice or reasons given by or to him [<sup>F114</sup>or it] in the exercise of functions under this Part shall be absolutely privileged.

#### Textual Amendments

**F112** 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)

**F113** 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)

**F114** 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

**I14** [S. 69](#) wholly in force at 1.4.1991 see [s. 124\(3\)](#) and [S.I. 1991/608](#), art. 2, [Sch.](#)

### Offences

## 70 Offences. **E+W**

- (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.



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- (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.
- (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:**

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**Changes to legislation:**

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