



Courts and Legal Services Act 1990

1990 CHAPTER 41

PART II

LEGAL SERVICES

Probate services

54 Preparation of papers for probate etc

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

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

- (a) a barrister;
- (b) a duly certificated notary public;
- (c) the Public Trustee;
- (d) the Official Solicitor;
- (e) any institution which—
 - (i) is authorised by the Bank of England, under Part I of the Banking Act 1987, to carry on a deposit-taking business ; and
 - (ii) satisfies the conditions mentioned in subsection (2A);
- (f) any building society which—
 - (i) is authorised to raise money from its members by the Building Societies Commission under section 9 of the Building Societies Act 1986; and
 - (ii) satisfies those conditions;
- (g) any insurance company which—
 - (i) is authorised under section 3 or 4 of the Insurance Companies Act 1982; and
 - (ii) satisfies those conditions;

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- (h) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (e), (f) or (g)—
 - (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 Lord Chancellor with respect to matters relating to such complaints.
- (3) Subsection (1) also does not apply to—
 - (a) any act done by an officer or employee of a body corporate at a time when it is exempt from subsection (1) by virtue of any of paragraphs (e) to (h) of subsection (2) or by virtue of section 55 of the Courts and Legal Services Act 1990 (preparation of probate papers etc.); or
 - (b) any act done by any person at the direction and under the supervision of another person if—
 - (i) that other person was at the time his employer, a partner of his employer or a fellow employee; and
 - (ii) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this section.
- (4) For the avoidance of doubt, where a person does any act which would constitute an offence under subsection (1) but for an exemption given to him by this section or by or under any other enactment, he shall not be guilty of an offence under section 22 by virtue of having done that act.”
- (2) In section 115 of the 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—
 - (a) makes a statement in his application, or supports his application with a document, which he knows to be false or misleading in a material particular; or
 - (b) recklessly makes a statement in his application, or supports his application with a document, which is false or misleading in a material particular,
 he shall be guilty of an offence.
- (4) Any person guilty of an offence under subsection (3) shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

- (5) In subsection (3) “letters of administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes.

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

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

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

- (1) Every justice shall have power to administer any oath or take any affidavit which is required for the purposes of an application for a grant of probate or letters of administration made in any non-contentious or common form probate business.
- (2) A justice before whom any oath or affidavit is taken or made under this section shall state in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
- (3) No justice shall exercise the powers conferred by this section in any proceedings in which he is interested.
- (4) A document purporting to be signed by a justice administering an oath or taking an affidavit shall be admitted in evidence without proof of the signature and without proof that he is a justice.
- (5) In this section—

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“affidavit” has the same meaning as in the Commissioners for Oaths Act 1889;

“justice” means a justice of the peace;

“letters of administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes; and

“non-contentious or common form probate business” has the same meaning as in section 128 of the Supreme Court Act 1981.