



# Administration of Justice Act 1985

## 1985 CHAPTER 61

### PART I

#### SOLICITORS

##### *Solicitors' discipline*

1 .....<sup>F1</sup>

#### Textual Amendments

**F1** S. 1 repealed (*l. 4. 1991*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**; S.I. 1991/608, art. 2, **Sch.**

#### 2 **Examination of solicitors' files in connection with complaints.**

After the section 44A inserted in the <sup>M1</sup>Solicitors Act 1974 by the preceding section there shall be inserted—

##### *“ Examination of files*

#### **44B Power of Society to examine files in connection with complaints.**

- (1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society—
- (a) alleging professional misconduct by a solicitor; or
  - (b) relating to the quality of any professional services provided by a solicitor,

the Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be

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*Changes to legislation:* There are currently no known outstanding effects for the Administration of Justice Act 1985, Part I. (See end of Document for details)

fixed by the Society, of all documents in the possession of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

- (2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 1, together with paragraphs 12 to 16 of that Schedule, shall apply in relation to the powers conferred by subsection (1) as they apply in relation to the powers conferred by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—
  - (a) any reference to a person appointed, or to a requirement, under that sub-paragraph shall be construed as including a reference to a person appointed, or to a requirement, under subsection (1); and
  - (b) any reference to any such documents as are mentioned in that sub-paragraph shall be construed as including a reference to any such documents as are mentioned in subsection (1).”.

**Marginal Citations**  
 M1 1974 c. 47.

3 ..... F2

**Textual Amendments**  
 F2 S. 3 wholly repealed (the repeal being in force on 1. 1. 1991 as regards s. 3(1) and 1. 4. 1991 as regards s. 3(2)) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s.125(7), [Sch.20.](#); S.I. 1990/2484, 1991/608, art. 2, Sch.

*Practising certificates*

**4 Issue of practising certificates subject to conditions.**

- (1) Section 12 of the <sup>M2</sup>Solicitors Act 1974 (discretion of Law Society with respect to issue of practising certificates in special cases) shall be amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (e), for “affecting” there shall be substituted “relating to”; and
  - (b) after that paragraph there shall be inserted—
    - “(ee) when, having been required by section 34(1) to deliver an accountant’s report to the Society, he has not delivered that report within the period allowed by section 34(2); or”.
- (3) In subsection (2)—
  - (a) after “(e),” there shall be inserted “(ee),”; and
  - (b) after “subsection (1)” there shall be inserted “then, except in the case of any circumstances of whose existence the Society is unaware at the time the certificate is issued,”.
- (4) After subsection (4) there shall be inserted—
  - “(4A) Without prejudice to the generality of subsection (4)(b)—

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- (a) conditions may be imposed under that provision for requiring the applicant to take any specified steps that will, in the opinion of the Society, be conducive to his carrying on an efficient practice as a solicitor; and
- (b) conditions may be so imposed (whether for the purpose mentioned in paragraph (a) or otherwise) notwithstanding that they may result in expenditure being incurred by the applicant.”.

#### Marginal Citations

M2 1974 c. 47.

## 5 Conditions imposed on current certificates.

After section 13 of the <sup>M3</sup>Solicitors Act 1974 there shall be inserted—

### “13A Imposition of conditions while practising certificates are in force.

- (1) Subject to the provisions of this section, the Society may in the case of any solicitor direct that his practising certificate for the time being in force (his “current certificate”) shall have effect subject to such conditions as the Society may think fit.
- (2) The power to give a direction under this section in the case of any solicitor shall be exercisable by the Society at any time during the period for which his current certificate is in force if—
  - (a) in the event of an application for a practising certificate being made by him at that time, section 12 would have effect in relation to him by reason of any such circumstances as are mentioned in paragraph (d), (e), (ee), (k) or (l) of subsection (1) of that section; or
  - (b) a receiving order in bankruptcy is in force against him; or
  - (c) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors.
- (3) Subject to subsection (4), the conditions specified in a direction under this section shall have effect as from the time when the solicitor concerned is notified of the Society’s decision to give the direction.
- (4) The Society may, if it thinks fit, provide in a direction under this section that the conditions specified in the direction shall not have effect pending the hearing and determination of any appeal under subsection (6).
- (5) Where there is a pending against any judgment or order an appeal by a solicitor which, if successful, would result in subsection (2) no longer being applicable to him, the Society shall not give a direction under this section in his case so long as the appeal is pending, unless in the opinion of the Society the proceedings on that appeal have been unduly protracted by him or are unlikely to be successful.
- (6) A solicitor in whose case a direction is given under this section may appeal to the Master of the Rolls against the decision of the Society within one month of being notified of it.
- (7) On an appeal under subsection (6), the Master of the Rolls may—

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- (a) affirm the decision of the Society; or
- (b) direct that the appellant’s current certificate shall have effect subject to such conditions as the Master of the Rolls thinks fit; or
- (c) by order revoke the direction; or
- (d) make such other order as he thinks fit.

(8) Subsection (4A) of section 12 shall apply for the purposes of subsection (1) of this section as it applies for the purposes of subsection (4)(b) of that section.”.

#### Marginal Citations

M3 1974 c. 47.

### *Restrictions applying to unqualified persons*

## 6 Preparation of conveyancing documents by unqualified persons.

(1) Section 22 of the <sup>M3</sup>Solicitors Act 1974 (restriction on person preparing certain instruments when not qualified to act as a solicitor) shall be amended as follows.

(2) In subsection (1), for “subsection (2)” there shall be substituted “subsections (2) and (2A)”.

(3) After subsection (2) there shall be inserted—

“(2A) Subsection (1) also does not apply to any act done by a person at the direction and under the supervision of another person if—

- (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and
- (b) 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) In subsection (3)—

- (a) after “instrument” there shall be inserted “includes a contract for the sale or other disposition of land (except a contract to grant such a lease as is referred to in section 45(2) of the Law of Property Act 1925 (short leases)), but”; and
- (b) at the end of paragraph (b) there shall be inserted “other than a contract that is included by virtue of the preceding provisions of this subsection;”.

(5) After that subsection there shall be inserted—

“(4) A local weights and measures authority may institute proceedings for an offence under this section.”.

#### Marginal Citations

M4 1974 c. 47.

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## 7 Preparation of papers for probate etc. by unqualified persons.

For section 23 of the <sup>M5</sup>Solicitors Act 1974 there shall be substituted—

### “23 Unqualified person not to prepare papers for probate etc.

- (1) Subject to subsections (2) and (3), any unqualified person who, directly or indirectly, draws or prepares any papers on which to found or oppose—
- (a) a grant of probate, or
  - (b) a grant of letters of administration,
- shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and liable on summary conviction to a fine not exceeding the first level on the standard scale.
- (2) Subsection (1) does not apply to a barrister or duly certificated notary public.
- (3) Subsection (1) also does not apply to any act done by a person at the direction and under the supervision of another person if—
- (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and
  - (b) 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.”.

#### Marginal Citations

M5 1974 c. 47.

#### *Other amendments*

## 8 Other amendments of Solicitors Act 1974.

The Solicitors Act 1974 shall have effect subject to the further amendments specified in Schedule 1.

#### *Incorporated practices*

## 9 Incorporated practices.

- (1) The Council may make rules—
- (a) making provision as to the management and control by solicitors [<sup>F3</sup>or solicitors and one or more registered foreign lawyers] of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals practising as solicitors [<sup>F4</sup>or by multi-national partnerships];
  - (b) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of any such services;

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- (c) prescribing the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised; and
  - (d) regulating the conduct of the affairs of such bodies.
- (2) Rules made by the Council may also make provision—
- (a) for the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
  - (b) for regulating the names that may be used by recognised bodies;
  - (c) as to the period for which any recognition granted under this section shall (subject to the provisions of this Part) remain in force;
  - (d) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud;
  - (e) for the keeping by the Society of a list containing the names and places of business of all bodies corporate which are for the time being recognised under this section, and for the information contained in any such list to be available for inspection;
  - (f) for rules made under any provision of the 1974 Act to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
  - (g) .....<sup>F5</sup>
  - (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under or by virtue of this Part.
- (3) Notwithstanding section 24(2) of the 1974 Act (application of penal provisions to bodies corporate), sections 20, 22(1) and 23(1) of that Act (prohibition on unqualified person acting as solicitor, etc.) shall not apply to a recognised body; and nothing in section 24(1) of that Act shall apply in relation to such a body.
- (4) Section 22(1), or (as the case may be) section 23(1), of that Act shall not apply to any act done by an officer or employee of a recognised body if—
- (a) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and
  - (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under the said section 22 or (as the case may be) under the said section 23.
- (5) A certificate signed by an officer of the Society and stating that any body corporate is or is not, or was or was not at any time, a recognised body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (6) Schedule 2 (which makes provision with respect to the application of provisions of the 1974 Act to recognised bodies and with respect to other matters relating to such bodies) shall have effect.
- (7) Subject to the provisions of that Schedule, the [<sup>F6</sup>Secretary of State] may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament provide for any enactment or instrument passed or made before the commencement of this section and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the [<sup>F6</sup>Secretary of State] to be necessary or expedient.

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(8) In this section—

“the 1974 Act” means the <sup>M6</sup>Solicitors Act 1974;

“the Council” and “the Society” have the meaning given by section 87(1) of the 1974 Act; <sup>F7</sup> . . .

[<sup>F8</sup>“multi-national partnership” means a partnership whose members consist of one or more registered foreign lawyers and one or more solicitors;]

[<sup>F9</sup>“officer”, in relation to a limited liability partnership, means a member of the limited liability partnership;]

“recognised body” means a body corporate for the time being recognised under this section.

[<sup>F10</sup>“registered European lawyer” means a person who is registered with the Law Society under regulation 17 of the European Communities (Lawyers’s Practice) Regulations 2000.]

(9) Any rules made by the Council under this section shall be made with the concurrence of the Master of the Rolls.

#### Textual Amendments

- F3** Words in s. 9(1)(a) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 54(2)(a)**; S.I. 1991/1883, art. 3, **Sch.**
- F4** Words at end of s. 9(1)(a) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 54(2)(b)**; S.I. 1991/1883, art. 3, **Sch.**
- F5** S. 9(2)(g) repealed (1.1.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 para. 7(2), 36(9)); S.I. 1999/3344, art. 2(d), **Sch. 1**
- F6** Words in s. 9 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), arts. 1(2), 9, **Sch. 2 para. 6(a)**
- F7** Word in s. 9(8) repealed (1.6.1992) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**; S.I. 1992/1221, art. 2, **Sch.**
- F8** Definitions in s. 9(8) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 54(3)**; S.I. 1991/1883, art. 3, **Sch.**
- F9** Definition of “officer” in s. 9(8) inserted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 12**
- F10** S. 9(8): definition “registered European lawyer” substituted (22.5.2000) for definition “registered foreign lawyer” by The European Communities (Lawyers Practice) Regulations 2000 (SI 2000/1119), reg 37(3), {Sch. 4 para. 15(1)(3)(b)} (as amended (1.7.2009) by S.I. 2009/1587, arts. 1(1), **3(4)**)

#### Modifications etc. (not altering text)

- C1** S. 9 definition of “recognised body” applied (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. **89(9)**; S.I. 1991/1883, art. 3, **Sch.**  
S. 9 extended (22.5.2000) by S.I. 2000/1119, reg. 37(3), Sch. 4 para. 1(3)(b) (as amended (1.7.2009) by S.I. 2009/1587, arts. 1(1), **3(12)**)

#### Commencement Information

- I1** S. 9 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683

#### Marginal Citations

- M6** 1974 c. 47.

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VALID FROM 31/03/2009

## **[<sup>F11</sup>9A Legal services bodies**

- (1) For the purposes of section 9, a “legal services body” means a body (corporate or unincorporate) in respect of which —
  - (a) the management and control condition, and
  - (b) the relevant lawyer condition,are satisfied.
- (2) The management and control condition is satisfied if—
  - (a) at least 75% of the body's managers are legally qualified,
  - (b) the proportion of shares in the body held by persons who are legally qualified is at least 75%,
  - (c) the proportion of voting rights in the body which persons who are legally qualified are entitled to exercise, or control the exercise of, is at least 75%,
  - (d) all the persons with an interest in the body who are not legally qualified are managers of the body, and
  - (e) all the managers of the body who are not legally qualified are individuals approved by the Society as suitable to be managers of a recognised body.
- (3) The Society may by rules under section 9 provide that, in relation to specified kinds of bodies, subsection (2) applies as if the references to 75% were to such greater percentage as may be specified (and different percentages may be specified for different kinds of bodies).
- (4) The relevant lawyer condition is satisfied in relation to a body if at least one manager of the body is—
  - (a) a solicitor,
  - (b) a registered European lawyer, or
  - (c) a qualifying body.
- (5) For that purpose a qualifying body is a body in respect of which—
  - (a) the management and control condition is satisfied
  - (b) the relevant lawyer condition is satisfied by virtue of subsection (4)(a) or (b), and
  - (c) the services condition is satisfied.
- (6) For the purposes of this section the following are legally qualified—
  - (a) an authorised person who is an individual;
  - (b) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41));
  - (c) a person entitled to pursue professional activities under a professional title to which the Directive applies in a state to which the Directive applies (other than the title of barrister or solicitor in England and Wales);
  - (d) an authorised person which is a body in respect of which—
    - (i) the services condition is satisfied, and
    - (ii) the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified



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- were to persons who are legally qualified by virtue of paragraphs (a) to (c);
- (e) a body which provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and in respect of which the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c).
- (f) a legal partnership which—
- (i) was in existence immediately before the commencement of this paragraph,
  - (ii) since that time has continued to be a partnership of the kind mentioned in rule 12.01(1)(b), 12.02(1)(b) or 12.04(1)(c)(i) of the pre-commencement conduct rules (framework of practice), and
  - (iii) has not, since that time, had a body corporate (other than a body within paragraph (g)) as a member;
- (g) a body corporate which—
- (i) was recognised under section 9 immediately before the commencement of this paragraph, and
  - (ii) has since that time continued to satisfy the requirements of rule 14.03(1) and 14.04(1) to (3) or the requirements of rule 14.05(1) to (3) of the pre-commencement conduct rules (restrictions on directors, owners etc. of incorporated practices);
- (h) a body which—
- (i) is an authorised person and satisfies the services condition, or
  - (ii) provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and which satisfies the requirements of rules under subsection (6C).
- (6A) For the purposes of subsection (6)(f), a partnership is to be treated as the same partnership despite a change in membership, if any person who was a member before the change remains a member.
- (6B) For the purposes of subsection (6)(f) and (g), the references in the pre-commencement conduct rules to a recognised body are to be construed as references to a body which was recognised under section 9 immediately before the commencement of subsection (6)(f) and (g).
- (6C) The Society must make rules for the purposes of paragraph (h) of subsection (6) prescribing the requirements relating to management and control which must be satisfied by or in relation to a body for it to fall within that paragraph.
- (7) For the purposes of this section, the services condition is satisfied in relation to a body if the body provides only services which may be provided by a recognised body (having regard to rules under section 9(1A) and (1C)).
- (8) For the purposes of this section—
- “authorised person” has the same meaning as in section 9;
- “the Directive” means Directive 98/5/EC of the European Parliament and the Council, to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;

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“legal partnership” means a partnership in which a solicitor, a registered European lawyer or a recognised body is permitted to practise by virtue of rules made under section 31 of the Solicitors Act 1974 (c. 47), as those rules had effect immediately before the commencement of subsection (6)(f);

“manager”, in relation to a body, has the meaning given by section 9;

“pre-commencement conduct rules” means rules under Part 2 of the Solicitors Act 1974 or section 9 of this Act, known as the Solicitors' Code of Conduct 2007, as those rules had effect immediately before the commencement of subsection (6)(f) and (g);

“recognised body” has the same meaning as in section 9 (subject to subsection (6B) above);

“registered European lawyer” has the same meaning as in section 9;

“shares” has the same meaning as for the purposes of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act);

“the Society” has the meaning given by section 87(1) of the Solicitors Act 1974;

“specified” means specified in rules made by the Society;

and a person has an interest in a body if the person has an interest in the body for the purposes of section 9.]

#### Textual Amendments

**F11** S. 9A inserted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 177, 211, [Sch. 16 para. 82](#) (with ss. 29, 192, 193); [S.I. 2009/503](#), [art. 2\(b\)\(ii\)](#) (subject to [art. 4](#)) (which amending [Sch. 16 para. 82](#) was amended (27.11.2008) by [The Legal Services Act 2007 \(Functions of a Designated Regulator\) Order 2008 \(S.I. 2008/3074\)](#), [arts. 1, 2](#))

#### Modifications etc. (not altering text)

**C2** S. 9A modified (temp.) (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 209, 211, [Sch. 22 para. 15](#) (with ss. 29, 192, 193); [S.I. 2009/503](#), [art. 2\(e\)](#) (subject to [art. 4](#))

## 10 Penalty for pretending to be a body recognised under s. 9.

- (1) A body corporate shall not describe itself or hold itself out as a body corporate for the time being recognised under section 9 unless it is so recognised.
- (2) Any body corporate which contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale.
- (3) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person 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.
- (4) . . . . . F12

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**Textual Amendments**

**F12** S. 10(4) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt.XIV**.

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**Commencement Information**

**I2** S. 10 wholly in force at 1.1.1992 see s. 69(2) and S.I. 1991/2683

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