



# Solicitors Act 1974

## 1974 CHAPTER 47

### PART II

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS AND CLERKS

##### *Restrictions on employment of certain persons*

#### **41 Employment by solicitor of person struck off or suspended.**

- (1) No solicitor shall, except in accordance with a written permission granted under this section, employ or remunerate in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that—
- his name has been struck off the roll, or
  - he is suspended from practising as a solicitor, or
  - his practising certificate is suspended while he is an undischarged bankrupt.

[<sup>F1</sup>(1A) No solicitor shall, except in accordance with a written permission granted under this section, employ or remunerate in connection with his practice as a solicitor any person if, to his knowledge, there is a direction in force under section 47(2)(g) in relation to that person.]

[<sup>F2</sup>(1B) Where—

- a solicitor (“the employed solicitor”) is employed by another solicitor in accordance with a written permission granted under this section, and
- the employed solicitor is disqualified from practising as a solicitor by reason of a fact mentioned in subsection (1)(b) or (c),

section 20(1) does not apply in relation to anything done by the employed solicitor in the course of that employment.]

- (2) The Society may grant a permission under this section for such period and subject to such conditions as the Society thinks fit.

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- (3) A solicitor aggrieved by the refusal of the Society to grant a permission under subsection (2), or by any conditions attached by the Society to the grant of any such permission, may appeal to the Master of the Rolls who may—
- (a) confirm the refusal or the conditions, as the case may be; or
  - (b) grant a permission under this section for such period and subject to such conditions as he thinks fit.
- (4) If any solicitor acts in contravention of this section or of any conditions subject to which a permission has been granted under it, the Tribunal or, as the case may be, the High Court shall order—
- (a) that his name be struck off the roll; or
  - (b) that he be suspended from practice for such period as the Tribunal or the court thinks fit.
- (5) The Master of the Rolls may make regulations about appeals to him under subsection (3).

#### Textual Amendments

- F1** S. 41(1A) inserted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 125(3), **Sch. 18 para. 14**
- F2** S. 41(1B) inserted (31.3.2009) by [Legal Services Act 2007 \(c. 29\)](#), ss. 177, 210, **Sch. 16 para. 41(2)** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)**

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

- C1** S. 41 (except subsection (4)) extended (1.1.1992) by [Administration of Justice Act 1985 \(c. 61, SIF 34\)](#), s. 9, **Sch. 2 para. 9**; S.I. 1991/2683, **art. 2**
- C2** S. 41 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 7(3)**

## 42 Failure to disclose fact of having been struck off or suspended.

- (1) Any person who, while he is disqualified from practising as a solicitor by reason of the fact that—
- (a) his name has been struck off the roll, or
  - (b) he is suspended from practising as a solicitor, or
  - (c) his practising certificate is suspended while he is an undischarged bankrupt, seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing him that he is so disqualified shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F3</sup>level 3 on the standard scale].

[<sup>F4</sup>(1A) Any person—

- (a) with respect to whom a direction is in force under section 47(2)(g); and
  - (b) who seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing him of the direction,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level three on the standard scale.]

- (2) Notwithstanding anything in [<sup>F5</sup>the <sup>M1</sup>Magistrates' Courts Act 1980], proceedings under this section may be commenced at any time before the expiration of six months

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from the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced except by, or with the consent of, the Attorney General.

#### Textual Amendments

- F3** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**  
**F4** [S. 42\(1A\)](#) inserted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 125(3), **Sch. 18 para. 15**  
**F5** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, **Sch. 7 para. 132**

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

- C3** [S. 42](#) extended (with modifications) (1.7.2009) by [The Registered Foreign Lawyers Order 2009 \(S.I. 2009/1589\)](#), **art. 5(c)**  
**C4** [S. 42](#) extended (22.5.2000) by [S.I. 2000/1119](#), regs. 1, 37(3), [Sch. 4 para. 7\(3\)](#) (as amended (1.7.2009) by [The Legal Services Act 2007 \(Registered European Lawyers\) Order 2009 \(S.I. 2009/1587\)](#)), **art. 3(7)(e)**  
**C5** [S. 42\(1\)](#) extended (1.1.1992) by [Administration of Justice Act 1985 \(c. 61, SIF 34\)](#), s. 9, **Sch. 2 para. 10**; [S.I. 1991/2683](#), **art. 2**

#### Marginal Citations

- M1** [1980 c. 43](#).

### 43 Control of [<sup>F6</sup>solicitors' employees and consultants].

- [<sup>F7</sup>(1) Where a person who is or was involved in a legal practice but is not a solicitor—
- (a) has been convicted of a criminal offence which is such that in the opinion of the Society it would be undesirable for the person to be involved in a legal practice in one or more of the ways mentioned in subsection (1A), or
  - (b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A),
- the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.

- (1A) A person is involved in a legal practice for the purposes of this section if the person—
- (a) is employed or remunerated by a solicitor in connection with the solicitor's practice;
  - (b) is undertaking work in the name of, or under the direction or supervision of, a solicitor;
  - (c) is employed or remunerated by a recognised body;
  - (d) is employed or remunerated by a manager or employee of a recognised body in connection with that body's business;
  - (e) is a manager of a recognised body;
  - (f) has or intends to acquire an interest in such a body.
- (2) An order made by the Society or the Tribunal under this subsection is an order which states one or more of the following—
- (a) that as from the specified date—

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- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor, the person with respect to whom the order is made,
  - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice, the person with respect to whom the order is made,
  - (iii) no recognised body shall employ or remunerate that person, and
  - (iv) no manager or employee of a recognised body shall employ or remunerate that person in connection with the business of that body, except in accordance with a Society permission;
  - (b) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit the person with respect to whom the order is made to be a manager of the body;
  - (c) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit the person with respect to whom the order is made to have an interest in the body.
- (2A) The Society may make regulations prescribing charges to be paid to the Society by persons who are the subject of an investigation by the Society as to whether there are grounds for the Society—
- (a) to make an order under subsection (2), or
  - (b) to make an application to the Tribunal for it to make such an order.
- (2B) Regulations under subsection (2A) may—
- (a) make different provision for different cases or purposes;
  - (b) provide for the whole or part of a charge payable under the regulations to be repaid in such circumstances as may be prescribed by the regulations.
- (2C) Any charge which a person is required to pay under regulations under subsection (2A) is recoverable by the Society as a debt due to the Society from the person.]
- [<sup>F8</sup>(3) Where an order has been made under subsection (2) with respect to a person by the Society or the Tribunal—
- (a) that person or the Society may make an application to the Tribunal for it to be reviewed, and
  - (b) whichever of the Society and the Tribunal made it may at any time revoke it.
- (3A) On the review of an order under subsection (3) the Tribunal may order—
- (a) the quashing of the order;
  - (b) the variation of the order; or
  - (c) the confirmation of the order;
- and where in the opinion of the Tribunal no prima facie case for quashing or varying the order is shown, the Tribunal may order its confirmation without hearing the applicant.]
- (4) The Tribunal, on the hearing of any application under this section, may make an order as to the payment of costs by any party to the application.
- (5) Orders made under [<sup>F9</sup>subsection (2) by the Society, or made, varied or confirmed under this section by the Tribunal and filed with the Society,] may be inspected <sup>F10</sup>. . . during office hours without payment <sup>F11</sup>. . . .

[<sup>F12</sup>(5A) In this section—

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“manager”, in relation to a recognised body, has the same meaning as it has in relation to a body in the Legal Services Act 2007 (see section 207 of that Act);

“recognised body” means a body recognised under section 9 of the Administration of Justice Act 1985;

“specified date” means such date as may be specified in the order;

“Society permission” means permission in writing granted by the Society for such period and subject to such conditions as the Society may think fit to specify in the permission.

(5B) A person has an interest in a recognised body for the purposes of this section if the person has an interest in that body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).]

<sup>F13</sup>(6) . . . . .

(7) For the purposes of this section an order [<sup>F14</sup>discharging a person absolutely or conditionally in respect of an offence shall, notwithstanding anything in section 14 of the Powers of Criminal Courts (Sentencing) Act 2000,] be deemed to be a conviction of the offence for which the order was made.

#### Textual Amendments

- F6** Words in s. 43 sidenote substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 7(7)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F7** S. 43(1)-(2C) substituted (31.3.2009) for s. 43(1)(1A)(2) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 42(2)** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)**
- F8** S. 43(3)(3A) substituted (27.9.1999) for s. 43(3) by 1999 c. 22, s. 48, **Sch. 7 para. 7(5)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F9** Words in s. 43(5) substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 7(6)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F10** Words in s. 43(5) repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 210, 211, Sch. 16 para. 42(3)(a), **Sch. 23** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)(f)(ii)(aa)** (subject to art. 4)
- F11** Words in s. 43(5) repealed (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 210, 211, Sch. 16 para. 42(3)(b), **Sch. 23** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)(f)(ii)(aa)** (subject to art. 4)
- F12** S. 43(5A)(5B) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 42(4)** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)** (subject to art. 4)
- F13** S. 43(6) repealed by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 8, 67(2), **Sch. 1 para. 10(b)**, Sch. 8 Pt. III
- F14** Words in s. 43(7) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 46**

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

- C6** S. 43 extended (1.1.1992) with modifications by Administration of Justice Act 1985 (c. 61, SIF 34), s. 9, **Sch. 2 para 11(2)(3)(5)**; S.I. 1991/2683, **art. 2**  
S. 43 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), Sch. 4 para. 7(3) (as amended (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(7)(e)**)

#### 44 Offences in connection with orders under section 43(2).

[<sup>F15</sup>(1) It is an offence for a person in respect of whom there is in force an order under section 43(2) which contains provision within section 43(2)(a)—

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- (a) to seek or accept any employment or remuneration from a solicitor, or an employee of a solicitor, in connection with the practice carried on by that solicitor without previously informing the solicitor or employee of the order;
  - (b) to seek or accept any employment or remuneration from a recognised body, or a manager or employee of a recognised body, in connection with that body's business, without previously informing the body, or manager or employee, of the order.
- (1A) It is an offence for a person in respect of whom there is in force an order under section 43(2) which contains provision within section 43(2)(b) to seek or accept a position as a manager of a recognised body, without previously informing that body of the order.
- (1B) It is an offence for a person in respect of whom there is in force an order under section 43(2) which contains provision within section 43(2)(c) to seek or accept an interest in a recognised body from any person, without previously informing that person and (if different) the recognised body of the order.
- (1C) A person guilty of an offence under subsection (1), (1A) or (1B) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]
- (2) Where [<sup>F16</sup>an order under section 43(2) is in force in respect of a person] then, if any solicitor knowingly acts in contravention of that order or of any conditions subject to which permission for [<sup>F17</sup>the taking of any action] has been granted under it, a complaint in respect of that contravention may be made to the Tribunal by or on behalf of the Society.
- (3) Any document purporting to be an order under section 43(2) and to be duly signed in accordance with section 48(1) shall be received in evidence in any proceedings under this section and be deemed to be such an order without further proof unless the contrary is shown.
- (4) Notwithstanding anything in [<sup>F18</sup>the <sup>M2</sup>Magistrates' Courts Act 1980], proceedings under subsection (1) may be commenced at any time before the expiration of six months from the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced, except with the consent of the Director of Public Prosecutions, by any person other than the Society or a person acting on behalf of the Society.
- [<sup>F19</sup>(5) In this section—
- “manager” has the same meaning as in section 43;
  - “recognised body” means a body recognised under section 9 of the Administration of Justice Act 1985;
- and for the purposes of subsection (1B) a person seeks or accepts an interest in a recognised body if the person seeks or accepts an interest which if it were obtained by the person would result in the person having an interest in that body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).]

#### Textual Amendments

**F15** S. 44(1)-(1C) substituted (31.3.2009) for s. 44(1) by [Legal Services Act 2007 \(c. 29\)](#), ss. 177, 211, [Sch. 16 para. 43\(a\)](#) (with ss. 29, 192, 193); S.I. 2009/503, [art. 2\(b\)\(i\)](#)

**F16** Words in s. 44(2) substituted (27.9.1999) by 1999 c. 22, s. 48, [Sch. 7 para. 8](#) (with [Sch. 14 para. 7\(2\)](#)); S.I. 1999/2657, [art. 2\(a\)](#)

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- F17** Words in s. 44(2) substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 43(b)** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)**
- F18** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, **Sch. 7 para. 132**
- F19** S. 44(5) inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 43(c)** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)**

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

- C7** S. 44 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), Sch. 4 para. 7(3) (as amended (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(7)(e)**)
- C8** S. 44(1) extended (1.1.1992) by Administration of Justice Act 1985 (c. 61, SIF 34), s. 9, **Sch. 2 para. 12(a)**; S.I. 1991/2683, **art. 2**
- C9** S. 44(1) applied (with modifications) by Administration of Justice Act 1985 (c. 61), Sch. 2 para. 18A(6) (as inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 107** (with ss. 29, 192, 193)); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 4)
- C10** S. 44(2) applied (with modifications) by Administration of Justice Act 1985 (c. 61), Sch. 2 para. 18A(6) (as inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 107** (with ss. 29, 192, 193)); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 4)
- C11** S. 44(3) extended (1.1.1992) by Administration of Justice Act 1985 (c. 61, SIF 34), s. 9, **Sch. 2 para. 12(b)**; S.I. 1991/2683, **art. 2**
- C12** S. 44(3)(4) applied (with modifications) by Administration of Justice Act 1985 (c. 61), Sch. 2 para. 18A(5) (as inserted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 107** (with ss. 29, 192, 193)); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 4)

**Marginal Citations**

- M2** 1980 c. 43.

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