

SCHEDULES

SCHEDULE 7

Section 48.

POWERS OF LAW SOCIETY

Monitoring of compliance with rules

- 1 In section 31(1) of the Solicitors Act 1974 (power of Council of the Law Society to make rules about professional practice, conduct and discipline), insert at the end “and for empowering the Society to take such action as may be appropriate to enable the Society to ascertain whether or not the provisions of rules made, or of any code or guidance issued, by the Council are being complied with.”

Bank and building society accounts

2. In—
- (a) section 32(4) of that Act (power of Council of the Law Society to disclose report or information about solicitor’s accounts to Director of Public Prosecutions for investigation and prosecution of offences), and
 - (b) paragraph 3 of Schedule 2 to the Administration of Justice Act 1985 (corresponding provision in relation to accounts of incorporated practices),
- omit “to the Director of Public Prosecutions” and “, if the Director thinks fit.”
- 3 In the Solicitors Act 1974, after section 33 insert—

“33A Inspection of practice bank accounts etc

- (1) The Council may make rules, with the concurrence of the Master of the Rolls, empowering the Council to require a solicitor to produce documents relating to any account kept by him at a bank or with a building society—
 - (a) in connection with his practice; or
 - (b) in connection with any trust of which he is or formerly was a trustee,for inspection by a person appointed by the Council pursuant to the rules.
 - (2) The Council shall be at liberty to disclose information obtained in exercise of the powers conferred by rules made under subsection (1) for use in investigating the possible commission of an offence by the solicitor and for use in connection with any prosecution of the solicitor consequent on the investigation.”
- 4 In section 87(1) of that Act (interpretation), in the definition of “building society”, omit “; and a reference to an account with a building society is a reference to a deposit account”.
- 5 In Schedule 2 to the Administration of Justice Act 1985, after paragraph 4 insert—

“Inspection of bank accounts

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(4A) Where rules made under section 33A(1) of the 1974 Act are applied to recognised bodies in accordance with section 9(2)(f) of this Act, the Council shall be at liberty to disclose information about a recognised body's accounts obtained in pursuance of the rules for use in investigating the possible commission of an offence by that body and for use in connection with any prosecution of that body consequent on the investigation."

Intervention for breach of rules on practice, conduct and discipline

6 In Schedule 1 to the Solicitors Act 1974 (intervention in solicitor's practice), in paragraph 1(1) (circumstances in which Law Society may intervene), in paragraph (c) (failure to comply with rules made by virtue of section 32 or 37(2) (c)), after "section" insert "31,".

Solicitors' employees and consultants

- 7 (1) Section 43 of that Act (control of employment of clerks) is amended as follows.
- (2) In subsection (1) (power of Law Society to apply to Solicitors Disciplinary Tribunal for order in the case of clerk guilty of an offence of dishonesty or other act which makes it undesirable for him to be employed by solicitor)—
- (a) for "a clerk to a solicitor" substitute "employed or remunerated by a solicitor in connection with his practice",
 - (b) after "employed" (in both places) insert "or remunerated",
 - (c) for "to whom he is or was clerk" substitute "by whom he is or was employed or remunerated", and
 - (d) for the words from "an application" to the end substitute "the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to him."
- (3) After that subsection insert—
- “(1A) Where the Society investigates whether there are grounds for making, or making an application to the Tribunal for it to make, an order under subsection (2) with respect to a person, the Council may direct him to pay to the Council an amount which—
- (a) is calculated by the Council as the cost to the Society of investigating the matter; or
 - (b) in the opinion of the Council represents a reasonable contribution towards that cost.”
- (4) In subsection (2) (order of Tribunal barring solicitor from employing the clerk)—
- (a) for the words from the beginning to "an order" substitute "An order under this subsection made by the Society or the Tribunal shall state", and
 - (b) for "application is" substitute "order is".
- (5) For subsection (3) (revocation by Tribunal) substitute—
- “(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

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- (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.”
- (6) In subsection (5) (inspection of orders), for “this section and filed with the Society” substitute “subsection (2) by the Society, or made, varied or confirmed under this section by the Tribunal and filed with the Society.”
- (7) In the sidenote, for “employment of certain clerks” substitute “solicitors' employees and consultants”.
- 8 In section 44(2) of that Act (breach of order by solicitor), for the words from “an order” to the end of paragraph (b) substitute “an order under section 43(2) is in force in respect of a person”.
- 9 (1) Section 49 of that Act (appeals from Tribunal) is amended as follows.
- (2) In subsection (3) (who can appeal)—
- (a) for “43(2)” substitute “43(3A)”, and
 - (b) for “application” substitute “order”.
- (3) In subsection (6) (finality of appeal), for “43(2)” substitute “43(3A)”.
- 10 In paragraph 11(1) of Schedule 2 to the Administration of Justice Act 1985 (control of employment of employees of recognised bodies)—
- (a) after “employed” (in each place) insert “or remunerated”, and
 - (b) for the words from “an application” to the end substitute “the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) of section 43 of the 1974 Act with respect to him.”

Power to examine files

- 11 (1) Section 44B of the Solicitors Act 1974 (power of Law Society to examine files of solicitor or his firm in connection with complaints) is amended as follows.
- (2) In subsection (1), for the words from “investigating” to the end of paragraph (b) substitute “investigating—
- (a) whether there has been professional misconduct by a solicitor;
 - (b) whether a solicitor has failed to comply with any requirement imposed by or by virtue of this Act or any rules made by the Council;
 - (c) whether any professional services provided by a solicitor were not of the quality which it is reasonable to expect of him as a solicitor; or
 - (d) whether there are grounds for making, or making an application to the Tribunal for it to make, an order under section 43(2) with respect to a person who is or was employed or remunerated by a solicitor in connection with his practice,”;

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and for the words from “all documents” to the end substitute “all relevant documents in the possession of the solicitor or his firm.”

- (3) For the sidenote substitute “Examination of files.”
- 12 In paragraph 14(1) of Schedule 2 to the Administration of Justice Act 1985 (power of Law Society to examine files of recognised body in connection with complaints), for paragraphs (a) and (b) substitute—
- “(a) whether a recognised body has failed to comply with any requirement imposed by or by virtue of this Act or any rules made by the Council and applicable to it by virtue of section 9 of this Act;
 - (b) whether any professional services provided by a recognised body were not of the quality which it is reasonable to expect of it as a recognised body; or
 - (c) whether there are grounds for making, or making an application to the Tribunal for it to make, an order under section 43(2) with respect to a person who is or was employed or remunerated by a recognised body in connection with its business;”;

and for the words from “all documents” to the end substitute “all relevant documents in the body’s possession.”

Payment of costs by solicitor under investigation

- 13 In the Solicitors Act 1974, after section 44B insert—

“Costs of investigations

44C Payment of costs of investigations

Where the Society investigates possible professional misconduct by a solicitor, or a failure or apprehended failure by a solicitor to comply with any requirement imposed by or by virtue of this Act or any rules made by the Council, the Council may direct him to pay to the Council an amount which—

- (a) is calculated by the Council as the cost to the Society of investigating and dealing with the matter; or
- (b) in the opinion of the Council represents a reasonable contribution towards that cost.”

- 14 In Schedule 2 to the Administration of Justice Act 1985, after paragraph 14 insert—

“Payment of costs of investigations

14A Where the Society investigates a failure or apprehended failure by a recognised body to comply with any requirement imposed by or by virtue of this Act or any rules applicable to it by virtue of section 9 of this Act, the Council may direct the body to pay to the Council an amount which—

- (a) is calculated by the Council as the cost to the Society of the investigation; or
- (b) in the opinion of the Council represents a reasonable contribution towards that cost.”

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Registered foreign lawyers

- 15 Subsections (5) to (7) of section 89 of the Courts and Legal Services Act 1990 (power to apply existing provisions to registered foreign lawyers with or without modifications and power to modify existing provisions in their application to recognised bodies whose officers include registered foreign lawyers) apply in relation to the provisions contained in this Schedule as if they were contained in an Act passed before the commencement of that section.