

SCHEDULE 1

Article 7

Application of Part 3 of the Solicitors Act 1974 to licensed bodies

Application

1. The provisions of Part 3 of the 1974 Act applied by virtue of this Schedule apply in relation to any activity of a licensed body which is an activity regulated by the Society in accordance with a licence issued to it under Part 5 of the 2007 Act.

Interpretation

2.—(1) Subject to sub-paragraph (2), any expression used in this Schedule which is also used in the 1974 Act has the same meaning as in that Act.

(2) In section 87(1)(1) of the 1974 Act the definitions of “client”, “contentious business” and “non-contentious business” apply for the purposes of—

- (a) this Schedule; and
- (b) any provision of the 1974 Act in so far as it has effect in relation to a licensed body by virtue of this Schedule,

as if for any reference to a solicitor there were substituted a reference to a licensed body.

Modification of provisions of Part 3 of the 1974 Act

3. In any provision to which this paragraph applies—

- (a) any reference to a solicitor or to a client of a solicitor shall be construed as including a reference to a licensed body or to a client of such a body;
- (b) any reference to a client’s solicitor shall be construed as including a reference to any licensed body acting for a client;
- (c) “he”, “him” or “his” shall be construed in relation to a licensed body as meaning “it” or “its”;
- (d) any reference to any employee of a solicitor who is an authorised person includes a reference to any employee or manager of the licensed body who is such a person;
- (e) except as provided by sub-paragraph (d), any reference to any employee of a solicitor includes a reference to any employee or manager of the licensed body.

4.—(1) Paragraph 3(a), (c) and (e) applies to section 56(2) (except subsections (1)(e) and (5)) of the 1974 Act.

(2) In relation to an order made under section 56 of the 1974 Act prescribing (by virtue of sub-paragraph (1)) general principles to be applied when determining the remuneration of licensed bodies in respect of non-contentious business section 56(5) has effect as if—

- (a) in paragraph (a) for “the solicitor” there were substituted “the licensed body”; and
- (b) in paragraph (d) the reference to the solicitor or any employee of the solicitor who is an authorised person were a reference to any employee or manager of the licensed body who is an authorised person.

(1) In section 87(1), the definition of “client” is amended by Schedule 4 to the Arbitration Act 1996 (c. 23); paragraph 12(a) of Schedule 1 to the Administration of Justice Act 1985 (c. 61) and paragraph 21(1) and (6) of Schedule 11 to the Constitutional Reform Act 2005 (c. 4). There are other amendments to section 87 but none are relevant to this Order.

(2) Section 56 is amended by paragraph 12(1) and (2) of Schedule 11 to the Land Registration Act 2002 (c. 9), and paragraphs 1 and 54 of Schedule 16 to the 2007 Act.

Status: This is the original version (as it was originally made).

5. Paragraph 3, except sub-paragraph (b), applies to sections 57, 59, 61, 62, 64 to 67 and 70 to 74(3) of the 1974 Act.

6.—(1) Paragraph 3(a) and (b) applies to section 60(4) (except subsection (5)) of the 1974 Act.

(2) In relation to a contentious business agreement made between a licensed body and a client section 60(5) of the 1974 Act has effect as if for that subsection there were substituted—

“(5) A provision in the agreement that the body shall not be liable for the negligence of any of its managers or employees shall be void if the client is a natural person who, in entering that agreement, is acting for purposes which are outside his trade, business or profession.

(6) A provision in the agreement that the body shall be relieved from any responsibility to which it would otherwise be subject in the course of carrying on its business as a licensed body shall be void.

(7) A provision in the agreement that any manager of the body shall be relieved from any responsibility to which the manager would otherwise be subject in the course of the carrying on by the body of its business as a licensed body shall be void.”.

7.—(1) Paragraph 3(a) and (c) applies to section 69(5) (except subsection (2A)) of the 1974 Act.

(2) In relation to a bill of costs delivered by a licensed body section 69 has effect as if for subsection (2A) there were substituted—

“(2A) A bill is signed in accordance with this subsection if it is—

(a) signed on behalf of the licensed body by any manager or employee of the body authorised by it to do so, or

(b) enclosed in, or accompanied by, a letter which is so signed and refers to the bill.”.

Effect on contentious business agreement of supervening incapacity of licensed body to act for client

8.—(1) If, after some business has been done under a contentious business agreement made between a licensed body and a client but before the body has wholly performed it, the body ceases to be capable of wholly performing it by reason of one of the following events, namely—

(a) the body ceases (for any reason) to be a licensed body;

(b) a relevant insolvency event occurs in relation to the body; or

(c) the client terminates the retainer or employment of the body in favour of another licensed body, a recognised body or a solicitor (as, notwithstanding the agreement, he shall be entitled to do),

any party to, or the representative of any party to, the agreement may apply to the court, and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as the court would have had if the licensed body were still capable of wholly performing it.

(3) These provisions are amended as follows: section 57 by paragraphs 1 and 54 of Schedule 16 to the 2007 Act and by section 98(2) to (4) of the Courts and Legal Services Act 1990 (c. 41) (“the 1990 Act”); section 59 by section 98(5) of the 1990 Act; section 61 by section 98(7) of the 1990 Act and paragraphs 1 and 57 of Schedule 16 to the 2007 Act; section 62 by paragraph 22(1) and (3) of Schedule 6 to the Mental Capacity Act 2005 (c. 9) and paragraphs 1 and 58 of Schedule 16 to the 2007 Act; sections 64 to 67 by paragraphs 1 and, respectively, 60, 61, 62 and 63 of Schedule 16 to the 2007 Act; sections 70 to 74 by paragraphs 1 and, respectively, paragraphs 65, 66, 67, 68 and 69 of Schedule 16 to the 2007 Act.

(4) Section 60 is amended by section 98(6) of the Courts and Legal Services Act 1990 and paragraphs 1 and 56 of Schedule 16 to the 2007 Act.

(5) Section 69 is amended by paragraphs 1 and 64 of Schedule 16 to the 2007 Act and [S.I. 1991/724](#).

(2) The court, notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, may order the amount due in respect of business under the agreement to be ascertained by assessment, and in that case—

- (a) the costs officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
- (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been wholly performed.

(3) If in such a case as is mentioned in sub-paragraph (1)(c) an order is made for the assessment of the amount due to the licensed body in respect of the business done under the agreement, the court shall direct the costs officer to have regard to the circumstances under which the termination of the body's retainer or employment has taken place, and the costs officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of any manager or employee of the body affording the client reasonable ground for terminating its retainer or employment, shall not allow to the body the full amount of the remuneration agreed to be paid to it.

(4) For the purposes of this paragraph a relevant insolvency event occurs in relation to a licensed body if—

- (a) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986⁽⁶⁾;
- (b) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
- (c) an administrative receiver within the meaning of section 251⁽⁷⁾ of that Act is appointed;
- (d) a meeting of creditors is held in relation to the body under section 95⁽⁸⁾ of that Act (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up);
- (e) an order for the winding up of the body is made.

Power of court to order delivery of bill of costs, etc

9. Any jurisdiction—

- (a) of the High Court to make any such orders as are referred to in subsection (1) of section 68 of the 1974 Act in relation to a solicitor (whether or not business has been done by him in the High Court); or
- (b) of a county court to make any such orders as are referred to in subsection (2) of that section in relation to a solicitor,

shall be exercisable in relation to a licensed body.

Power of court to order licensed body to pay over clients' money

10.—(1) Any jurisdiction of the High Court to make, in the case of a solicitor who is acting or has acted as such for a client, an order of the kind referred to in sub-paragraph (2) shall be exercisable in the case—

- (a) of a licensed body which is acting or has acted as such for a client; or
- (b) of any manager or employee of such a body.

⁽⁶⁾ 1986 c. 45.

⁽⁷⁾ Section 251 is inserted by Schedule 16 to the Enterprise Act 2002 (c. 40).

⁽⁸⁾ Section 95 is amended, in so far as relevant, by S.I. 2009/864 and S.I. 2010/18.

Status: *This is the original version (as it was originally made).*

(2) The order referred to in sub-paragraph (1) is an order requiring the payment or delivery up of, or otherwise relating to, money or securities which the solicitor has in his possession or control on behalf of the client.