



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

##### *Extension of conveyancing services*

#### **34 The Authorised Conveyancing Practitioners Board.**

- (1) There shall be a body corporate to be known as the Authorised Conveyancing Practitioners Board (in this Act referred to as “the Board”).
- (2) The Board shall consist of a Chairman and at least four, and at most eight, other members appointed by the [F1Secretary of State] .
- (3) In appointing any member, the [F1Secretary of State] shall have regard to the desirability of—
  - (a) appointing persons who have experience in, or knowledge of—
    - (i) the provision of conveyancing services;
    - (ii) financial arrangements associated with conveyancing;
    - (iii) consumer affairs; or
    - (iv) commercial affairs; and
  - (b) securing, so far as is reasonably practicable, that the composition of the Board is such as to provide a proper balance between the interests of authorised practitioners and those who make use of their services.
- (4) The Board shall not be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown.
- (5) The Board’s property shall not be regarded as property of, or held on behalf of, the Crown.

*Status: Point in time view as at 03/04/2006.*

*Changes to legislation: Courts and Legal Services Act 1990, Cross Heading: Extension of conveyancing services is up to date with all changes known to be in force on or before 20 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Neither the Board nor any of its staff or members shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of its functions.
- (7) Subsection (6) does not apply where the act or omission is shown to have been in bad faith.
- (8) The provisions of Schedule 5 shall have effect with respect to the constitution, procedure and powers of the Board and with respect to connected matters.

#### Textual Amendments

- F1** Words in s. 34 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [art. 9](#), [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)

#### Commencement Information

- I1** S. 34 wholly in force at 1. 4.1991 see [s. 124\(3\)](#) and [S.I. 1991/608](#), [art. 2](#), [Sch.](#)

### 35 Functions of the Board and financial provisions.

- (1) It shall be the general duty of the Board—
  - (a) to seek to develop competition in the provision of conveyancing services;
  - (b) to supervise the activities of authorised practitioners in connection with the provision by them of conveyancing services.
- (2) In discharging the duty imposed on it by subsection (1)(b) the Board shall, in particular, make arrangements designed to enable it to ascertain whether authorised practitioners are complying with regulations made by the [F2Secretary of State] under section 40.
- (3) The Board shall have the specific functions conferred on it by or under this Act.
- (4) Where the [F2Secretary of State] refers to the Board any matter connected with—
  - (a) the provision of conveyancing services by authorised practitioners; or
  - (b) the organisation or practice of authorised practitioners,
 it shall be the duty of the Board to consider the matter and to report its conclusions to the [F2Secretary of State] .
- (5) Any report made under subsection (4) may be published by the [F2Secretary of State] in such manner as he thinks fit.
- (6) A copy of any guidance for authorised practitioners issued by the Board shall be sent by the Board to the [F2Secretary of State] .
- (7) Where it appears to the [F2Secretary of State] that there are grounds for believing that the Board has failed in any way to carry out any of its duties under this Act, he may give such directions to the Board as he considers appropriate.
- (8) The Board may make rules providing for the expenses which it incurs in exercising its functions, after taking into account any grants made to it under subsection (10) and any fees received by it, to be met by the imposition on each authorised practitioner of an annual levy calculated, and payable, in accordance with the provisions of the rules.

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- (9) Any amount due to the Board from an authorised practitioner in respect of any levy payable by that practitioner under the rules shall be recoverable by the Board as a civil debt.
- (10) The [F2Secretary of State] may, with the approval of the Treasury, make grants to the Board towards meeting the expenses incurred, or to be incurred, by it in the discharge of its functions.
- (11) Any such grant may be made subject to such terms and conditions (including conditions as to repayment) as the [F2Secretary of State] sees fit to impose.
- (12) Any sums required by the [F2Secretary of State] for making grants under subsection (10) shall be paid out of money provided by Parliament.
- (13) Any sums repaid by the Board in accordance with conditions imposed under subsection (11) shall be paid into the Consolidated Fund.

#### Textual Amendments

**F2** Words in s. 35 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)

#### Commencement Information

**I2** S. 35 wholly in force at 1. 4.1991 see s. 124(3) and S.I. 1991/608, [art. 2 Sch.](#)

### 36 Provision of conveyancing services by authorised practitioners.

- (1) The restriction imposed by section 22 of the <sup>M1</sup>Solicitors Act 1974 (which has the effect of limiting the categories of person who may provide conveyancing services) shall not apply to any act done in connection with the provision of conveyancing services—
  - (a) by an individual at any time when he is an authorised practitioner;
  - (b) by a body corporate at any time when it is an authorised practitioner;
  - (c) by an officer or employee of a body corporate at any time when that body is an authorised practitioner; or
  - (d) by a member or employee of an unincorporated association at any time when that association is an authorised practitioner.
- (2) In subsection (1)(c) and (d) “officer”, “employee” and “member” mean respectively an officer, employee or member who (at the time of the act in question) satisfies, and is acting in accordance with, regulations under section 40.
- (3) Any rule (however described) which is imposed by a professional or other body and which would, but for this subsection, result in restricting or preventing a qualified person from—
  - (a) providing any conveyancing services as an authorised practitioner;
  - (b) acting as an employee of an authorised practitioner in connection with the provision of any such services; or
  - (c) acting on behalf of an authorised practitioner in connection with the provision of any such services,

shall be of no effect unless it is given partial effect by subsection (4)(a) or full effect by subsection (4)(b).

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- (4) If the result mentioned in subsection (3) is not the main or only result of the rule in question, subsection (3)—
- (a) shall apply only to the extent that the rule would have that result; but
  - (b) shall not apply if the rule is reasonably required as a rule of general application for the purpose of regulating the conduct or practice of all members of that body.
- (5) Nothing in this section prevents a professional or other body from imposing a rule that any member of that body who is acting as mentioned in subsection (3)(c) may do so only on terms which allow him to give independent legal or financial advice to the person for whom conveyancing services are being provided by the authorised practitioner concerned.
- (6) In this section “qualified person” means—
- (a) any barrister, solicitor, duly certificated notary public or licensed conveyancer;
  - (b) any body recognised under section 9 of the <sup>M2</sup>Administration of Justice Act 1985 (incorporated practices); or
  - (c) any body recognised under section 32 of the Act of 1985 (incorporated bodies carrying on business of provision of conveyancing services).

#### Marginal Citations

**M1** 1974 c. 47.

**M2** 1985 c. 61.

### 37 Authorisation of practitioners.

- (1) On an application duly made by a person who proposes to provide conveyancing services, the Board shall authorise that person to provide those services, if—
- (a) it is satisfied that the applicant’s business is, and is likely to continue to be, carried on by fit and proper persons or, in the case of an application by an individual, that he is a fit and proper person; and
  - (b) it is of the opinion that the applicant will comply with the requirements mentioned in subsection (7).
- (2) Any such authorisation shall be given in writing and shall take effect on such date as the Board may specify.
- (3) A person so authorised is referred to in this Act as “an authorised practitioner”.
- (4) An application for authorisation must be made in accordance with rules made by the Board, with the approval of the [<sup>F3</sup>Secretary of State], for the purposes of this section.
- (5) On making any such application, the applicant shall pay to the Board such fee as may be specified in the rules.
- (6) The rules may, in particular, make provision—
- (a) as to the form in which any application must be made; and
  - (b) for the furnishing by applicants of information required by the Board in connection with their applications.

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- (7) The requirements are that the applicant—
- (a) complies with any rules made by the Board and any regulations made under section 40, so far as applicable;
  - (b) ensures that satisfactory arrangements are at all times in force for covering adequately the risk of any claim made against the applicant in connection with the provision of conveyancing services provided by the applicant, however arising;
  - (c) maintains satisfactory procedures for—
    - (i) dealing with complaints made about any aspect of conveyancing services provided by the applicant; and
    - (ii) the payment of compensation;
  - (d) has in force satisfactory arrangements to protect the applicant’s clients in the event of the applicant ceasing to provide conveyancing services;
  - (e) is a member of the Conveyancing Ombudsman Scheme.
- [<sup>F4</sup>(8) Subsection (8A) applies if the applicant is—
- (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect or carry out contracts of insurance; or
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) or (d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) either—
    - (i) to accept deposits, or
    - (ii) to effect or carry out contracts of insurance.
- (8A) The Board must have regard to the fact that the applicant has obtained that permission in determining whether it is satisfied as mentioned in subsection (1)(a).
- (8B) Subsection (8) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]
- (9) The Board shall maintain a register of authorised practitioners which shall be open to inspection, at all reasonable times, without charge.
- (10) The [<sup>F3</sup>Secretary of State] may by order amend the provisions of subsection (7) by imposing any additional requirement or by varying or removing any requirement.

#### Textual Amendments

- F3** Words in s. 37 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)
- F4** [S. 37\(8\)-\(8B\)](#) substituted for s. 37(8) (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 321](#)

### 38 Refusal of approval and imposition of conditions.

- (1) Where the Board proposes to refuse an application for authorisation under section 37 it shall give the applicant written notice of its proposal.

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- (2) The notice shall give the Board's reasons for proposing to refuse the application and inform the applicant of the effect of subsection (7).
- (3) Any authorisation under section 37 may be given subject to the applicant complying with conditions imposed by the Board with a view to the protection of clients.
- (4) Any such conditions—
  - (a) may be imposed by the Board either when granting the application for authorisation or at any later time; and
  - (b) may be expressed to apply in relation to a specified part of the authorised practitioner's business (for example, to a specified branch or office).
- (5) Before imposing any such conditions, the Board shall give written notice of its intention to do so to the applicant or (as the case may be) authorised practitioner concerned.
- (6) The notice shall inform the person to whom it is given of the effect of subsection (7).
- (7) Where a notice is served under subsection (1) or (5), it shall be the duty of the Board to consider any representations duly made by the person on whom the notice is served before determining whether to grant or refuse the application or to impose any of the proposed conditions.
- (8) For the purposes of subsection (7), representations are duly made if—
  - (a) they are made to the Board before the end of the period of 28 days beginning with the day on which the notice is served; and
  - (b) unless the Board directs otherwise in a particular case, are in writing.
- (9) Where the Board—
  - (a) proposes to impose a condition under this section on an authorised practitioner; and
  - (b) is satisfied that the circumstances of the case are exceptional and justify the condition taking effect immediately,
 it may disregard subsections (5) to (8) when imposing the condition.
- (10) If the Board refuses the application, or imposes any of the proposed conditions, it shall give the applicant notice in writing and, in the case of a refusal, the notice shall give the Board's reasons for refusing.
- (11) A notice under subsection (10) shall inform the applicant of his rights of appeal under section 41.
- (12) An authorised practitioner who fails to comply with a condition imposed on him under this section shall not thereby cease to be such a practitioner; but in such a case the Board may—
  - (a) impose additional, or substituted, conditions on him; or
  - (b) revoke or suspend his authorisation in accordance with rules made under section 39(1).

### **39 Revocation and suspension of authorisation.**

- (1) The Board shall, with the approval of the [F5Secretary of State], make rules providing for the circumstances in which the authorisation of a person under section 37 may be revoked or suspended by the Board.

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- (2) Where any such authorisation is revoked or suspended in accordance with the rules, the person concerned shall cease to be an authorised person for the purposes of this Act.
- (3) The rules may, in particular—
  - (a) provide for any suspension to be indefinite or for a period specified by the Board;
  - (b) provide for the total, or partial, lifting of any suspension in specified circumstances;
  - (c) provide for the publication by the Board of notice of any suspension or revocation under the rules;
  - (d) make transitional provision for dealing with any work in hand at the time when a revocation or suspension takes effect.
- (4) Where the Board—
  - (a) revokes or suspends any authorisation in accordance with the rules; or
  - (b) lifts a suspension so imposed,it shall take such steps as are reasonably practicable to inform any body which has any regulatory functions in relation to that authorised practitioner of the action which it has taken.

#### Textual Amendments

- F5** Words in *ss. 39-41* substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)

## 40 Regulations about competence and conduct etc. of authorised practitioners.

- (1) The [<sup>F6</sup>Secretary of State] may by regulation make such provision as he considers expedient with a view to securing—
  - (a) that authorised practitioners maintain satisfactory standards of competence and conduct in connection with the provision by them of conveyancing services;
  - (b) that in providing such services (and in particular in fixing their charges) they act in a manner which is consistent with the maintenance of fair competition between authorised practitioners and others providing conveyancing services; and
  - (c) that the interests of their clients are satisfactorily protected.
- (2) The regulations may, in particular, make provision—
  - (a) designed to—
    - (i) provide for the efficient transaction of business;
    - (ii) avoid unnecessary delays;
  - (b) as to the supervision, by persons with such qualifications as may be prescribed, of such descriptions of work as may be prescribed;
  - (c) requiring authorised practitioners to arrange, so far as is reasonably practicable, for each transaction to be under the overall control of one individual;
  - (d) designed to avoid conflicts of interest;

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- (e) as to the terms and conditions on which authorised practitioners may provide conveyancing services;
- (f) as to the information to be given to prospective clients, the manner in which or person by whom it is to be given and the circumstances in which it is to be given free of charge;
- (g) as to the handling by authorised practitioners of their clients' money;
- (h) as to the disclosure of and accounting for commissions.

#### Textual Amendments

**F6** Words in [ss. 39-41](#) substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [art. 9](#), [Sch. 2 para. 8\(1\)\(a\)](#) (with [arts. 6, 8](#))

#### Commencement Information

**I3** [S. 40](#) wholly in force at 1.4.1991 see [s. 124\(3\)](#) and [S.I. 1991/608](#), [art. 2](#).

## 41 The Conveyancing Appeal Tribunals.

- (1) There shall be tribunals to be known as “Conveyancing Appeal Tribunals” which shall hear appeals under this section.
- (2) Any person who is aggrieved by any decision of the Board to—
  - (a) refuse an application for authorisation under section 37;
  - (b) suspend any authorisation given under section 37;
  - (c) refuse to lift such a suspension;
  - (d) revoke any such authorisation; or
  - (e) impose any condition under section 38,
 may appeal to a Conveyancing Appeal Tribunal.
- (3) No such decision of the Board shall have effect until—
  - (a) any appeal against it which is duly made under this section is disposed of; or
  - (b) the period within which an appeal may be made has expired without an appeal having been made.
- (4) Subsection (3) shall not apply where—
  - (a) the Board is satisfied that the circumstances of the case are exceptional and justify the decision in question taking effect immediately, or earlier than would otherwise be the case; and
  - (b) notifies the person concerned to that effect.
- (5) In this Part a Conveyancing Appeal Tribunal is referred to as “a Tribunal”.
- (6) A Tribunal shall consist of a Chairman and two other members appointed by the <sup>F7</sup>Secretary of State].
- (7) To be qualified for appointment as Chairman of a Tribunal, a person must have a 7 year general qualification (within the meaning of section 71).
- (8) Of the other two members of a Tribunal—
  - (a) one must have experience in, or knowledge of, the provision of conveyancing services; and



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- (b) the other must have experience in, or knowledge of, accountancy.
- (9) The [F7Secretary of State] shall appoint a person to be Secretary to the Tribunals.
- (10) On receipt of notice of an appeal which is being made to a Tribunal, the Secretary shall inform the [F7Secretary of State] and the [F7Secretary of State] shall appoint a Tribunal to hear that appeal.
- (11) Schedule 6 shall have effect with respect to the Tribunals.

#### Textual Amendments

- F7 Words in ss. 39-41 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)

## 41 The Conveyancing Appeal Tribunals. **E+W**

- (1) There shall be tribunals to be known as “Conveyancing Appeal Tribunals” which shall hear appeals under this section.
- (2) Any person who is aggrieved by any decision of the Board to—
  - (a) refuse an application for authorisation under section 37;
  - (b) suspend any authorisation given under section 37;
  - (c) refuse to lift such a suspension;
  - (d) revoke any such authorisation; or
  - (e) impose any condition under section 38,may appeal to a Conveyancing Appeal Tribunal.
- (3) No such decision of the Board shall have effect until—
  - (a) any appeal against it which is duly made under this section is disposed of; or
  - (b) the period within which an appeal may be made has expired without an appeal having been made.
- (4) Subsection (3) shall not apply where—
  - (a) the Board is satisfied that the circumstances of the case are exceptional and justify the decision in question taking effect immediately, or earlier than would otherwise be the case; and
  - (b) notifies the person concerned to that effect.
- (5) In this Part a Conveyancing Appeal Tribunal is referred to as “a Tribunal”.
- (6) A Tribunal shall consist of a Chairman and two other members appointed by the [F7Secretary of State].
- [F48](7) A person is eligible for appointment as Chairman of a Tribunal only if he satisfies the judicial-appointment eligibility condition on a 5-year basis.]
- (8) Of the other two members of a Tribunal—
  - (a) one must have experience in, or knowledge of, the provision of conveyancing services; and
  - (b) the other must have experience in, or knowledge of, accountancy.
- (9) The [F7Secretary of State] shall appoint a person to be Secretary to the Tribunals.

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- (10) On receipt of notice of an appeal which is being made to a Tribunal, the Secretary shall inform the <sup>F7</sup>Secretary of State] and the <sup>F7</sup>Secretary of State] shall appoint a Tribunal to hear that appeal.
- (11) Schedule 6 shall have effect with respect to the Tribunals.

#### Textual Amendments

- F7** Words in ss. 39–41 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)
- F48** S. 41(7) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50(6), 148, **Sch. 10 para. 21**; S.I. 2008/1653, **art. 2(d)** (with arts. 3, 4)

## 42 Appeals from Tribunals on points of law.

- (1) At the instance of a person aggrieved by a decision of a Tribunal, or at the instance of the Board, an appeal shall lie to the High Court on any question of law arising from that decision.
- (2) If, on an appeal to the High Court under this section, the court is of the opinion that the decision appealed against was wrong in law, it shall remit the matter for re-hearing and determination by the Tribunal concerned or, where it is not reasonably practicable for the case to be re-heard by that Tribunal, by another Tribunal.

<sup>F8</sup>(3) .....

#### Textual Amendments

- F8** S. 42(3) repealed (27.9.1999) by 1999 c. 22, ss. 106, 108(3)(f), **Sch. 15 Pt. III** (with Sch. 14 paras. 7(2), 36(9))

## 43 The Conveyancing Ombudsman Scheme.

- (1) The Board shall, with the approval of the <sup>F9</sup>Secretary of State] , make rules establishing a scheme (to be known as “the Conveyancing Ombudsman Scheme”) for the investigation, by a person appointed by the Board with the approval of the <sup>F9</sup>Secretary of State] , of complaints against authorised practitioners in connection with the provision by them of conveyancing services.
- (2) The person so appointed shall be known as “the Conveyancing Ombudsman”.
- (3) No person shall be appointed to be the Conveyancing Ombudsman if he is, or has at any time within the period of three years ending with his appointment been—
- involved in any capacity in the provision by an authorised practitioner of conveyancing services; or
  - a member of the Board.
- (4) Schedule 7 shall have effect for the purpose of supplementing this section.
- (5) A person may be appointed to be both a member of the staff of the Board and a member of the staff of the Conveyancing Ombudsman.

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- (6) The Conveyancing Ombudsman may not make any charge for the use of his services.
- (7) His expenses under the Scheme shall be defrayed by the Board and shall rank as expenses of the Board for the purposes of section 35.
- (8) The Conveyancing Ombudsman shall submit to the Board an annual report on the discharge of his functions.
- (9) The Board shall, when submitting its own annual report to the [F9Secretary of State] , send him a copy of the Conveyancing Ombudsman's annual report.
- (10) When laying the Board's annual report before Parliament, the [F9Secretary of State] shall also lay before Parliament a copy of the Conveyancing Ombudsman's report.
- (11) It shall be the duty of the Conveyancing Ombudsman to inform the Board of any evidence which comes to his attention suggesting that there has been, or may have been, a breach of any of the rules made under subsection (1) or of the regulations made under section 40.
- (12) The Board may—
  - (a) pay such remuneration and travelling and other allowances to the Conveyancing Ombudsman as may be determined by the Board;
  - (b) pay such pension, allowances or gratuities to or in respect of the Conveyancing Ombudsman as may be so determined; and
  - (c) if the Conveyancing Ombudsman ceases to hold office and it appears to the Board that there are special circumstances which make it right that he should receive compensation, pay him such sum as may be so determined.

#### Textual Amendments

- F9** Words in *ss. 43-45* substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), [art. 9](#), [Sch. 2 para. 8\(1\)\(a\)](#) (with [arts. 6, 8](#))

#### 44 Compensation scheme.

- (1) The Board may, with the approval of the [F10Secretary of State] , make rules establishing a scheme for compensating persons who have suffered loss in consequence of dishonesty on the part of authorised practitioners or their employees.
- (2) The rules may, in particular—
  - (a) provide for the establishment and functioning of an independent body (whether corporate or unincorporate) to administer the scheme and, subject to the rules, determine and regulate any matter relating to its operation;
  - (b) establish a fund out of which compensation is to be paid;
  - (c) provide for the levying of contributions from authorised practitioners and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
  - (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified; and
  - (e) contain incidental and supplementary provisions.

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### Textual Amendments

**F10** Words in ss. 43-45 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

## 45 Advisory and supervisory functions of <sup>F11</sup>Office of Fair Trading .

- (1) Where the <sup>F12</sup>Secretary of State] is considering whether—
  - (a) to approve any rules which the Board is proposing to make; or
  - (b) to make any regulations under section 40,
 he shall first send a copy of the proposed rules or regulations to the <sup>F13</sup>OFT].
- (2) The <sup>F13</sup>OFT] shall consider whether the proposed rules or regulations would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the <sup>F13</sup>OFT] has completed <sup>F14</sup>its] consideration <sup>F14</sup>it] shall give such advice to the <sup>F12</sup>Secretary of State] as <sup>F14</sup>it] thinks fit.
- (4) The <sup>F13</sup>OFT] shall keep under review the rules made by the Board and the regulations made by the <sup>F12</sup>Secretary of State] under section 40.
- (5) If the <sup>F13</sup>OFT] is of the opinion that any such rule or regulation has, or is likely to have, the effect of restricting, distorting or preventing competition to any significant extent, <sup>F15</sup>it] shall report <sup>F15</sup>its] opinion to the <sup>F12</sup>Secretary of State] .
- (6) Any report under subsection (5) shall state what, in the <sup>F16</sup>OFT's] opinion, is the effect of the rule or regulation or its likely effect.
- (7) The <sup>F13</sup>OFT] may publish any advice given by <sup>F17</sup>it] under subsection (3) or report made by <sup>F17</sup>it] under subsection (5).
- (8) The <sup>F13</sup>OFT] shall, so far as practicable, exclude from anything published under subsection (7) any matter—
  - (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the <sup>F18</sup>its] opinion, seriously and prejudicially affect the interests of that person.

### Textual Amendments

**F11** Words in s. 45 sidenote substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25, para. 23\(2\)\(g\)](#); S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**F12** Words in ss. 43-45 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

**F13** Words in s. 45 substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25, para. 23\(2\)\(a\)](#); S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**F14** Words in s. 45(3) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25, para. 23\(2\)\(b\)](#); S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**F15** Words in s. 45(5) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25, para. 23\(2\)\(c\)](#); S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**F16** Word in s. 45(6) substituted (1.4.2003) by [2002 c. 40, ss. 278, 279, Sch. 25, para. 23\(2\)\(d\)](#); S.I. 2003/766, **art. 2, Sch.** (with art. 3)

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- F17** Words in s. 45(7) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(2)(e); S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F18** Word in s. 45(8)(b) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(f); S.I. 2003/766, **art. 2**, Sch. (with art. 3)

#### **46 Investigatory powers of [F19OFT].**

- (1) For the purpose of investigating any matter under section 45, the [F20OFT] may by notice in writing—
  - (a) require any person to produce to [F20:it] or to any person appointed by [F20:it] for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person’s custody or under that person’s control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to [F20:it] (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court.
- (3) <sup>F21</sup> .....

#### **Textual Amendments**

- F19** Words in s. 46 sidenote substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(3)(b); S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F20** Words in s. 46(1) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(3)(a); S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F21** S. 46(3) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(3)(c), Sch. 26; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

#### **[F2246A Enforcement of notices under section 46**

- (1) The High Court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 46(1).
- (2) An application under subsection (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under subsection (1), the High Court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Subsections (5) and (6) apply where the High Court is satisfied, after hearing any witnesses and statements as mentioned in subsection (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under section 46(1).

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- (5) The High Court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the High Court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.]

#### Textual Amendments

**F22** Ss. 46A, 46B inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 23(4); S.I. 2003/766, art. 2, Sch. (with art. 3)

#### [<sup>F23</sup>46B Altering, etc. documents required to be produced under section 46

- (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under section 46(1).
- (2) A person who commits an offence under subsection (1) shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

#### Textual Amendments

**F23** Ss. 46A, 46B inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 23(4); S.I. 2003/766, art. 2, Sch. (with art. 3)

#### 47 Power to obtain information and require production of documents.

- (1) The Board may serve a notice on any—
  - (a) authorised practitioner;
  - (b) officer or employee of an authorised practitioner;
  - (c) qualified person who is acting, or has acted, on behalf of an authorised practitioner; or
  - (d) officer or employee of such a qualified person,
 requiring him to provide the Board (within such time and at such place as may be specified in the notice) with such document, or documents of such a description, or with such information, as may be so specified.
- (2) The Board shall not exercise its powers under subsection (1) except for the purpose of obtaining such information as it thinks reasonably necessary in connection with the discharge of any of its functions.
- (3) The Board's power under this section to require a person to produce any document includes power—
  - (a) if the document is produced, to take copies of it or extracts from it and to require that person, or any other person who is or was a director or officer of, or is or was at any time employed by or acting as an employee of, the practitioner concerned, to provide an explanation of the document;

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- (b) if the document is not produced, to require the person who was required to produce it to state, to the best of his knowledge and belief, where it is.
- (4) The Board’s power under this section may be exercised in relation to a person who falls within subsection (1)(c) or (d) only in relation to the provision of conveyancing services on behalf of the authorised practitioner concerned.
- (5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.
- (6) Any person who, in response to any requirement imposed on him under this section, knowingly or recklessly provides any information or explanation or makes any statement which is false or misleading in a material particular shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Where any person from whom production of a document is required under this section claims a lien on the document, the production of it shall be without prejudice to the lien.
- (8) Nothing in this section shall compel—
  - (a) the production of a document containing a communication which is privileged from disclosure in legal proceedings in England and Wales; or
  - (b) the furnishing of information contained in such a communication.
- (9) In this section “document” includes any information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy in legible form.

#### **48 Investigations on behalf of the Board.**

- (1) If it appears to the Board desirable to do so—
  - (a) in connection with the discharge of any of its functions; and
  - (b) in the interests of customers or potential customers of an authorised practitioner,it may appoint one or more competent persons (“the investigators”) to investigate and report to it on the state and conduct of the affairs of that authorised practitioner.
- (2) The Board shall give written notice of any such appointment to the authorised practitioner concerned.
- (3) If the investigators think it necessary for the purposes of their investigation, they may also investigate the affairs of any qualified person who is acting, or has acted, on behalf of the authorised practitioner (so far as concerns the provision of conveyancing services on behalf of the authorised practitioner), after giving the qualified person written notice of their investigation.
- [<sup>F24</sup>(4) Subsection (4A) applies if an authorised practitioner whose affairs are under investigation is—
  - (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect or carry out contracts of insurance; or



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- (b) an EEA firm of the kind mentioned in paragraph 5(b) or (d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) either—
  - (i) to accept deposits, or
  - (ii) to effect or carry out contracts of insurance.
- (4A) The [<sup>F25</sup>Secretary of State] may give a direction with a view to limiting the scope of the investigation to matters concerned with the provision of conveyancing services.
- (4B) Subsection (4) must be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]
- (5) Any such direction may be general or be given with respect to a particular investigation.
- (6) It shall be the duty of every person whose affairs are being investigated and of any officer or employee of his—
  - (a) to produce to the investigators, within such time and at such place as they may reasonably require, all documents relating to the provision of conveyancing services by the practitioner which are in that person's custody or power;
  - (b) to provide the investigators, within such time as they may require, with such information as they may reasonably require with respect to the provision of those services; and
  - (c) to give the investigators such assistance in connection with the investigation as he is reasonably able to give.
- (7) The investigators may take copies of, or extracts from, any document produced to them under subsection (6).
- (8) This section applies in relation to a former authorised practitioner or former qualified person as it applies in relation to an authorised practitioner or qualified person.
- (9) Any person who, without reasonable excuse, fails to produce any document, or provide any information, which it is his duty to produce under subsection (6) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.
- (10) Any person who, in response to any requirement imposed on him under this section, knowingly or recklessly provides any information or explanation or makes any statement which is false or misleading in a material particular shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (11) Nothing in this section shall compel the production by an authorised practitioner or qualified person acting on his behalf of a document containing a privileged communication made by him or to him in that capacity.

#### Textual Amendments

**F24** S. 48(4)-(4B) substituted for s. 48(4) (1.12.2001) by S.I. 2001/3649, arts. 1, 322



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**F25** Words in s. 48 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(1\)\(a\)](#) (with arts. 6, 8)

#### **49 Restrictions on disclosure of information.**

- (1) Subject to section 50, restricted information which relates to the business or other affairs of any person shall not be disclosed—
  - (a) by the Board or any member of its staff;
  - (b) by any person appointed as an investigator under section 48 or any officer or servant of his; or
  - (c) by any person obtaining it directly or indirectly from a person mentioned in paragraph (a) or (b),  
without the consent of the person from whom it was obtained and, if they are different, the person to whom it relates.
- (2) Subject to subsection (3), information is restricted information for the purposes of this section if it was obtained (whether or not in response to any requirement that it be provided) for the purposes of, or in the discharge of functions under, any provision made by or under this Act.
- (3) Information shall not be treated as restricted information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not prevented by this section.
- (4) Any person who contravenes this section shall be guilty of an offence and 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 a fine not exceeding the statutory maximum.

#### **50 Exceptions from restrictions on disclosure.**

- (1) Section 49 shall not prevent the disclosure of information—
  - (a) with a view to the institution, or otherwise for the purposes, of any criminal proceedings;
  - (b) with a view to the institution, or otherwise for the purposes, of any civil proceedings arising under or by virtue of this Act;
  - (c) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (d) in pursuance of any Community obligation.
- (2) Section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting—
  - (a) <sup>F26</sup> .....
  - (b) the Board to discharge any of its functions;
  - (c) the Law Society, the General Council of the Bar, the Council for Licensed Conveyancers or the Faculty Office of the Archbishop of Canterbury to discharge any of its functions;
  - <sup>F27</sup>(d) .....

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- [<sup>F28</sup>(e) a recognised investment exchange or a recognised clearing house (both within the meaning given by section 285 of the Financial Services and Markets Act 2000) to discharge any of its functions;]
- (f) the Bank of England to discharge any of its functions;
- [<sup>F29</sup>(fa) the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986 or under the Financial Services and Markets Act 2000;
- (g) the Secretary of State or the Treasury to discharge any function conferred by this Act, the Financial Services and Markets Act 2000 or any enactment relating to competition, companies or insolvency;
- (h) the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 to discharge its functions under that Part;
- (ha) a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
 to conduct an investigation to discharge his functions;
- (hb) any inspector appointed by the Secretary of State under this Act or any enactment relating to competition, companies or insolvency to discharge his functions under that enactment;
- (hc) a body designated under section 326(1) of the Financial Services and Markets Act 2000 to discharge its functions in its capacity as a body designated under that section;]
- (i) an official receiver to discharge any of his functions under any enactment relating to insolvency;
- (j) a body which is a recognised professional body under section 391 of the <sup>M3</sup>Insolvency Act 1986 to discharge any of its functions as such a body;
- <sup>F30</sup>(k) .....
- <sup>F27</sup>(l) .....
- (m) the [<sup>F31</sup>OFT to discharge any of its] functions under—
  - (i) this Act;
  - (ii) the <sup>M4</sup>Fair Trading Act 1973 <sup>F32</sup>...;
  - (iii) the <sup>M5</sup>Consumer Credit Act 1974;
  - <sup>F33</sup>(iv) .....
  - (v) the <sup>M6</sup>Estate Agents Act 1979;
  - (vi) the <sup>M7</sup>Competition Act 1980;
  - <sup>F34</sup>(vii) .....
  - (viii) <sup>F35</sup> .....
  - [<sup>F36</sup>(ix) the Competition Act 1998;]
  - [<sup>F37</sup>(x) the Financial Services and Markets Act 2000;]
  - [<sup>F38</sup>[<sup>F39</sup>(xi)] the Enterprise Act 2002;]

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- [<sup>F40</sup>(xii) the Business Protection from Misleading Marketing Regulations 2008;
- (xiii) the Consumer Protection from Unfair Trading Regulations 2008;]
- (n) the [<sup>F41</sup>Competition Commission] to discharge any of its functions under the Fair Trading Act 1973 and [<sup>F41</sup>, the Competition Act 1980 and the Competition Act 1998];
- (o) the Scottish Conveyancing and Executry Services Board to discharge any of its functions;
- (p) an authority in a country or territory outside the United Kingdom to discharge any functions corresponding to—
- (i) the functions of the Board, <sup>F42</sup>. . . or the [<sup>F43</sup>Financial Services Authority]; or
- (ii) those functions of the Secretary of State mentioned in paragraph (g);
- (q) the Insolvency Practitioners Tribunal to discharge any of its functions under the Insolvency Act 1986;
- [<sup>F44</sup>(r) the Financial Services Tribunal to discharge any function it has in relation to proceedings before it by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
- (s) the Financial Services and Markets Tribunal to discharge any of its functions.]
- [<sup>F45</sup>(t) the Pensions Regulator Tribunal to discharge any of its functions.]
- (3) Subject to subsection (4), section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the [<sup>F46</sup>Secretary of State] to discharge any functions which are specified in the order.
- (4) An order under subsection (3) designating an authority for the purposes of this section may—
- (a) impose conditions subject to which the disclosure of information is permitted by subsection (3); and
- (b) otherwise restrict the circumstances in which disclosure is permitted.
- (5) Where information has been disclosed by one person (“the first person”) to another, by virtue of subsection (2), section 49 shall not prevent that other person from disclosing that information to any person to whom it could have been disclosed by the first person by virtue of subsection (2).
- (6) The [<sup>F46</sup>Secretary of State] may by order modify the application of any provision of this section so as—
- (a) to prevent the disclosure of information by virtue of that provision; or
- (b) to restrict the extent to which disclosure of information is permitted by virtue of that provision.

#### Textual Amendments

- F26** S. 50(2)(a) repealed (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 8\(2\)](#) (with arts. 6, 8)
- F27** S. 50(2)(d)(l) repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 323(2)(a)
- F28** S. 50(2)(e) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 323(3)
- F29** S. 50(2)(fa)-(hc) substituted for s. 50(2)(fa)-(h) (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 323(4)
- F30** S. 50(2)(k) omitted (30.4.2001) by virtue of [S.I. 2001/1283](#), [art. 3\(5\)](#)

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- F31** Words in s. 50(2)(m) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(a); S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F32** Words in s. 50(2)(m)(ii) repealed (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(3), **Sch. 4 Pt. 1** (with reg. 28(2)(3))
- F33** S. 50(2)(m)(iv) repealed (1.3.2000) by S.I. 2000/311, **art. 25**
- F34** S. 50(2)(m)(vii) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 323(2)(b)
- F35** S. 50(2)(m)(viii) repealed (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), regs. 30(1)(3), Sch. 2 para. 48(a), **Sch. 4 Pt. 1** (with reg. 28(2)(3))
- F36** S. 50(2)(m)(ix) inserted (1.4.1999) by S.I. 1999/506, **art. 28(a)**
- F37** S. 50(2)(m)(x) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 323(5)
- F38** S. 50(2)(m)(x) inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(b); S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F39** S. 50(2)(m)(x) renumbered (20.6.2003) as s. 50(2)(m)(xi) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 13(2)**
- F40** S. 50(2)(m)(xii)(xiii) inserted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(1), **Sch. 2 para. 48(b)** (with reg. 28(2)(3))
- F41** Words in s. 50(2)(n) substituted (1.4.1999) by S.I. 1999/506, **art. 28(b)**
- F42** Words in s. 50(2)(p)(i) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 323(2)(c)
- F43** Words in s. 50(2)(p)(i) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 67(b)**; S.I. 1998/1120, **art. 2**
- F44** S. 50(2)(r)(s) substituted for s. 50(2)(r) (1.12.2001) by S.I. 2001/3649, **arts. 1**, 323(6)
- F45** S. 50(2)(t) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322(1), **Sch. 4 para. 21** (with s. 313); S.I. 2005/275, **art. 2(7)(12)**, Sch. Pt. 7
- F46** Words in s. 50(3)(6) substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

#### Marginal Citations

- M3** 1986 c. 45.  
**M4** 1973 c. 41.  
**M5** 1974 c. 39.  
**M6** 1979 c. 38.  
**M7** 1980 c. 21.

## 50 Exceptions from restrictions on disclosure. **E+W**

- (1) Section 49 shall not prevent the disclosure of information—
- (a) with a view to the institution, or otherwise for the purposes, of any criminal proceedings;
  - (b) with a view to the institution, or otherwise for the purposes, of any civil proceedings arising under or by virtue of this Act;
  - (c) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (d) in pursuance of any Community obligation.
- (2) Section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting—
- (a) <sup>F26</sup> .....
  - (b) the Board to discharge any of its functions;

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- (c) the Law Society, the General Council of the Bar, the Council for Licensed Conveyancers or the Faculty Office of the Archbishop of Canterbury to discharge any of its functions;
- <sup>F27</sup>(d) .....
- <sup>F28</sup>(e) a recognised investment exchange or a recognised clearing house (both within the meaning given by section 285 of the Financial Services and Markets Act 2000) to discharge any of its functions;]
- (f) the Bank of England to discharge any of its functions;
- <sup>F29</sup>(fa) the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986 or under the Financial Services and Markets Act 2000;
- (g) the Secretary of State or the Treasury to discharge any function conferred by this Act, the Financial Services and Markets Act 2000 or any enactment relating to competition, companies or insolvency;
- (h) the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 to discharge its functions under that Part;
- (ha) a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
  - (ii) section 168 of that Act (investigations in particular cases),
  - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
  - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
  - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation to discharge his functions;
- (hb) any inspector appointed by the Secretary of State under this Act or any enactment relating to competition, companies or insolvency to discharge his functions under that enactment;
- (hc) a body designated under section 326(1) of the Financial Services and Markets Act 2000 to discharge its functions in its capacity as a body designated under that section;]
  - (i) an official receiver to discharge any of his functions under any enactment relating to insolvency;
  - (j) a body which is a recognised professional body under section 391 of the <sup>M3</sup>Insolvency Act 1986 to discharge any of its functions as such a body;
- <sup>F30</sup>(k) .....
- <sup>F27</sup>(l) .....
- (m) the <sup>F31</sup>OFT to discharge any of its] functions under—
  - (i) this Act;
  - (ii) the <sup>M4</sup>Fair Trading Act 1973 (other than Part II);
  - (iii) the <sup>M5</sup>Consumer Credit Act 1974;
  - <sup>F33</sup>(iv) .....
  - (v) the <sup>M6</sup>Estate Agents Act 1979;
  - (vi) the <sup>M7</sup>Competition Act 1980;
  - <sup>F34</sup>(vii) .....

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- (viii) the <sup>M8</sup>Control of Misleading Advertisements Regulations 1988;
  - [<sup>F36</sup>(ix) the Competition Act 1998;]
  - [<sup>F37</sup>(x) the Financial Services and Markets Act 2000;]
  - [<sup>F38</sup>[<sup>F39</sup>(xi)] the Enterprise Act 2002;]
  - (n) the [<sup>F41</sup>Competition Commission] to discharge any of its functions under the Fair Trading Act 1973 and [<sup>F41</sup>, the Competition Act 1980 and the Competition Act 1998];
  - (o) the Scottish Conveyancing and Executry Services Board to discharge any of its functions;
  - (p) an authority in a country or territory outside the United Kingdom to discharge any functions corresponding to—
    - (i) the functions of the Board, <sup>F42</sup>. . . or the [<sup>F43</sup>Financial Services Authority]; or
    - (ii) those functions of the Secretary of State mentioned in paragraph (g);
  - (q) the Insolvency Practitioners Tribunal to discharge any of its functions under the Insolvency Act 1986;
  - [<sup>F44</sup>(r) the Financial Services Tribunal to discharge any function it has in relation to proceedings before it by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
  - (s) the Financial Services and Markets Tribunal to discharge any of its functions.]
  - [<sup>F45</sup>(t) the Pensions Regulator Tribunal to discharge any of its functions.]
- (3) Subject to subsection (4), section 49 shall not prevent the disclosure of information for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the [<sup>F46</sup>Secretary of State] to discharge any functions which are specified in the order.
- (4) An order under subsection (3) designating an authority for the purposes of this section may—
- (a) impose conditions subject to which the disclosure of information is permitted by subsection (3); and
  - (b) otherwise restrict the circumstances in which disclosure is permitted.
- (5) Where information has been disclosed by one person (“the first person”) to another, by virtue of subsection (2), section 49 shall not prevent that other person from disclosing that information to any person to whom it could have been disclosed by the first person by virtue of subsection (2).
- (6) The [<sup>F46</sup>Secretary of State] may by order modify the application of any provision of this section so as—
- (a) to prevent the disclosure of information by virtue of that provision; or
  - (b) to restrict the extent to which disclosure of information is permitted by virtue of that provision.

#### Textual Amendments

- F26** S. 50(2)(a) repealed (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 8(2)** (with arts. 6, 8)
- F27** S. 50(2)(d)(l) repealed (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 323(2)(a)**
- F28** S. 50(2)(e) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 323(3)**
- F29** S. 50(2)(fa)-(hc) substituted for s. 50(2)(fa)-(h) (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 323(4)**

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- F30** S. 50(2)(k) omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(5)**
- F31** Words in s. 50(2)(m) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(a); S.I. 2003/766, **art. 2, Sch.** (with art. 3)
- F33** S. 50(2)(m)(iv) repealed (1.3.2000) by S.I. 2000/311, **art. 25**
- F34** S. 50(2)(m)(vii) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(2)(b)**
- F36** S. 50(2)(m)(ix) inserted (1.4.1999) by S.I. 1999/506, **art. 28(a)**
- F37** S. 50(2)(m)(x) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(5)**
- F38** S. 50(2)(m)(x) inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25, para. 23(5)(b); S.I. 2003/766, **art. 2, Sch.** (with art. 3)
- F39** S. 50(2)(m)(x) renumbered (20.6.2003) as s. 50(2)(m)(xi) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 13(2)**
- F41** Words in s. 50(2)(n) substituted (1.4.1999) by S.I. 1999/506, **art. 28(b)**
- F42** Words in s. 50(2)(p)(i) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(2)(c)**
- F43** Words in s. 50(2)(p)(i) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 67(b)**; S.I. 1998/1120, **art. 2**
- F44** S. 50(2)(r)(s) substituted for s. 50(2)(r) (1.12.2001) by S.I. 2001/3649, **arts. 1, 323(6)**
- F45** S. 50(2)(t) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322(1), **Sch. 4 para. 21** (with s. 313); S.I. 2005/275, **art. 2(7)(12)**, Sch. Pt. 7
- F46** Words in s. 50(3)(6) substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 8(1)(a)** (with arts. 6, 8)

#### Marginal Citations

- M3** 1986 c. 45.  
**M4** 1973 c. 41.  
**M5** 1974 c. 39.  
**M6** 1979 c. 38.  
**M7** 1980 c. 21.  
**M8** S.I. 1988/915.

## 51 Board's intervention powers.

- (1) The powers conferred on the Board by this section may be exercised if it appears to the Board to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an authorised practitioner.
- (2) The Board may, in particular, exercise any such power where it appears to it—
  - (a) that an authorised practitioner who is an individual is no longer fit to provide conveyancing services;
  - (b) that any person carrying on the business of an authorised practitioner is not fit to provide such services; or
  - (c) that an authorised practitioner has failed, or is likely to fail, to comply with any regulation made under section 40.
- (3) The Board may direct the authorised practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
  - (a) any assets belonging to any client of the authorised practitioner and held by or under the control of the authorised practitioner in connection with his business as an authorised practitioner; or
  - (b) any assets of such a kind which are specified in the direction.
- (4) The Board may direct the authorised practitioner to transfer to the Board, or to such persons ("the trustees") as may be specified in the direction—

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- (a) all assets belonging to any client of that practitioner and held by or under his control in connection with his business as an authorised practitioner; or
  - (b) any assets of such a kind which are specified in the direction.
- (5) Any assets which have been transferred as a result of a direction given under subsection (4) shall be held by the Board, or by the trustees, on trust for the client concerned.
- (6) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the Board.
- (7) In this section—
- “assets” includes any sum of money held (in whatever form and whether or not in any bank, building society or other account) by the authorised practitioner or on behalf of the client concerned and any instrument or other document belonging to that client; and
  - “authorised practitioner” includes a person whose authorisation has been suspended or revoked under section 39.
- (8) Any direction under this section—
- (a) must be given in writing;
  - (b) must state the reason why it is being given;
  - (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the authorised practitioner);
  - (d) may be varied or revoked by a further direction given by the Board.

## **52 Board’s intervention powers: supplemental provisions.**

- (1) In this section—
- “the intervention powers” means the powers given to the Board by section 51; and
  - “a direction” means a direction given under that section.
- (2) An authorised practitioner to whom a direction is given may appeal against it to a Conveyancing Appeal Tribunal.
- (3) Any authorised practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to appeal).
- (4) If, on an application made to the High Court by the Board, the court is satisfied—
- (a) that an authorised practitioner has failed, within a reasonable time, to comply with any direction given to it; or
  - (b) that there is a reasonable likelihood that an authorised practitioner will so fail,
- it may make an order requiring the authorised practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.

[<sup>F47</sup>(5) Subsection (6) applies to an authorised practitioner who—

- (a) has permission under any provision of the Financial Services and Markets Act 2000 to carry on a regulated activity; or
- (b) is an appointed representative of a person with such permission;



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and “regulated activity” and “appointed representative” have the meaning given in that Act.

<sup>F47</sup>(6) In relation to an authorised practitioner to whom this subsection applies, the powers of intervention may be exercised only after consultation with the Financial Services Authority.]

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**Textual Amendments**

**F47** S. 52(5)(6) substituted for s. 52(5)-(8) (1.12.2001) by S.I. 2001/3649, arts. 1, 324

**Status:**

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