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*Status: Point in time view as at 31/12/2020.*

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## SCHEDULES

### SCHEDULE 3

Section 19

#### EXEMPT PERSONS

##### *Rights of audience*

- 1 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of exercising a right of audience before a court in relation to any proceedings (subject to paragraph 7).
- (2) The person is exempt if the person—
- (a) is not an authorised person in relation to that activity, but
  - (b) has a right of audience granted by that court in relation to those proceedings.
- (3) The person is exempt if the person—
- (a) is not an authorised person in relation to that activity, but
  - (b) has a right of audience before that court in relation to those proceedings granted by or under any enactment.
- (4) The person is exempt if the person is the Attorney General or the Solicitor General and—
- (a) the name of the person is on the roll kept by the Law Society under section 6 of the Solicitors Act 1974 (c. 47), or
  - (b) the person has been called to the Bar by an Inn of Court.
- (5) The person is exempt if the person is the Advocate General for Scotland and is admitted—
- (a) as a solicitor in Scotland under section 6 of the Solicitors (Scotland) Act 1980 (c. 46), or
  - (b) to practise as an advocate before the courts of Scotland.
- (6) The person is exempt if the person—
- (a) is a party to those proceedings, and
  - (b) would have a right of audience, in the person's capacity as such a party, if this Act had not been passed.
- (7) The person is exempt if—
- (a) the person is an individual whose work includes assisting in the conduct of litigation,
  - (b) the person is assisting in the conduct of litigation—
    - (i) under instructions given (either generally or in relation to the proceedings) by an individual to whom sub-paragraph (8) applies, and
    - (ii) under the supervision of that individual, and

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- [<sup>F1</sup>(c) the proceedings are not reserved family proceedings and are being heard in chambers—
- (i) in the High Court or county court, or
  - (ii) in the family court by a judge who is not, or by two or more judges at least one of whom is not, within section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984 (lay justices).]
- (8) This sub-paragraph applies to—
- (a) any authorised person in relation to an activity which constitutes the conduct of litigation;
  - (b) any person who by virtue of section 193 is not required to be entitled to carry on such an activity.
- (9) The person is an exempt person in relation to the exercise of a right of audience in proceedings on an appeal from the Comptroller-General of Patents, Designs and Trade Marks to the Patents Court under the Patents Act 1977 (c. 37), if the person is a solicitor of the Court of Judicature of Northern Ireland.
- (10) For the purposes of this paragraph—
- “family proceedings” has the same meaning as in the Matrimonial and Family Proceedings Act 1984 (c. 42) and also includes [<sup>F2</sup>any proceedings in the family court and ] any other proceedings which are family proceedings for the purposes of the Children Act 1989 (c. 41);
- “reserved family proceedings” means such category of family proceedings as the Lord Chancellor may, after consulting the President of the Law Society and with the concurrence of the President of the Family Division, by order prescribe;
- and any order made under section 27(9) of the Courts and Legal Services Act 1990 (c. 41) before the day appointed for the coming into force of this paragraph is to have effect on and after that day as if it were an order made under this sub-paragraph.

#### Textual Amendments

- F1** Sch. 3 para. 1(7)(c) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 98(1)**; [S.I. 2014/954](#), art. 2(d) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F2** Words in Sch. 3 para. 1(10) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 98(2)**; [S.I. 2014/954](#), art. 2(d) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

#### *Conduct of litigation*

- 2 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes the conduct of litigation in relation to any proceedings (subject to paragraph 7).
- (2) The person is exempt if the person—
- (a) is not an authorised person in relation to that activity, but
  - (b) has a right to conduct litigation granted by a court in relation to those proceedings.
- (3) The person is exempt if the person—

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- (a) is not an authorised person in relation to that activity, but
  - (b) has a right to conduct litigation in relation to those proceedings granted by or under any enactment.
- (4) The person is exempt if the person—
- (a) is a party to those proceedings, and
  - (b) would have a right to conduct the litigation, in the person's capacity as such a party, if this Act had not been passed.
- (5) The person is an exempt person in relation to any activity which is carried on in or in connection with proceedings on an appeal from the Comptroller-General of Patents, Designs and Trade Marks to the Patents Court under the Patents Act 1977 (c. 37), if the person is a solicitor of the Court of Judicature of Northern Ireland.

*Reserved instrument activities*

- 3
- (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes reserved instrument activities (subject to paragraph 7).
- (2) The person is exempt if the person prepares the instruments or applications in the course of the person's duty as a public officer.
- (3) The person (“E”) is exempt if—
- (a) E is an individual,
  - (b) E carries on the activity at the direction and under the supervision of another individual (“P”),
  - (c) when E does so, P and E are connected, and
  - (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (10).
- (4) For the purposes of sub-paragraph (3), P and E are connected if—
- (a) P is E's employer,
  - (b) P is a fellow employee of E,
  - (c) P is a manager or employee of a body which is an authorised person in relation to the activity, and E is also a manager or employee of that body.
- (5) If the person is an accredited person, the person is exempt to the extent that the activity consists of the preparation of any instrument—
- (a) which creates, or which the person believes on reasonable grounds will create, a farm business tenancy (within the meaning of the Agricultural Tenancies Act 1995 (c. 8)), or
  - (b) which relates to an existing tenancy which is, or which the person believes on reasonable grounds to be, such a tenancy.
- (6) In sub-paragraph (5) “accredited person” means a person who is—
- (a) a Fellow of the Central Association of Agricultural Valuers, or
  - (b) a Member or Fellow of the Royal Institution of Chartered Surveyors.
- (7) The person is exempt to the extent that the activity carried on by the person is also a reserved legal activity within sub-paragraph (8) and the person is—
- (a) authorised to carry on that activity (other than under Part 5) by a relevant approved regulator in relation to the activity,

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- (b) authorised to carry on that activity by a licence under Part 5, or
  - (c) an exempt person in relation to that activity by virtue of paragraph 1 or 2 of this Schedule.
- (8) The activities are—
- (a) the exercise of a right of audience;
  - (b) the conduct of litigation.
- (9) The person is exempt if the person is employed merely to engross the instrument or application.
- (10) The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.
- (11) The person is exempt if—
- (a) the person is a person qualified to practise as a solicitor in Scotland in accordance with section 4 of the Solicitors (Scotland) Act 1980 (c. 46), and
  - (b) the reserved instrument activities fall within paragraph 5(1)(c) of Schedule 2 (preparation of certain instruments relating to real or personal property or legal proceedings).

#### *Probate activities*

- 4 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes probate activities (subject to paragraph 7).
- (2) The person (“E”) is an exempt person if—
- (a) E is an individual,
  - (b) E provides the probate activities at the direction and under the supervision of another individual (“P”),
  - (c) when E does so, P and E are connected, and
  - (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (4).
- (3) For the purposes of sub-paragraph (2), P and E are connected if—
- (a) P is E's employer,
  - (b) P is a fellow employee of E,
  - (c) P is a manager or employee of a body which is an authorised person in relation to the activity, and E is also a manager or employee of that body.
- (4) The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.

#### *Notarial activities*

- 5 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes notarial activities (subject to paragraph 7).
- (2) The person is exempt if the person is not an authorised person in relation to that activity under this Act, but is authorised to carry on that activity by or by virtue of any other enactment.

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- (3) The person is exempt if section 14 of the Public Notaries Act 1801 (c. 79) applies to the person, and—
- (a) where that section applies by virtue of the person holding or exercising an office or appointment, the person carries on the activity for ecclesiastical purposes;
  - (b) where that section applies by virtue of the person performing a public duty or service under government, the person carries on the activity in the course of performing that duty or service.
- (4) The person is exempt if the person is an individual who carries on the notarial activities otherwise than for or in expectation of a fee, gain or reward.

#### *Administration of oaths*

- 6 (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes the administration of oaths (subject to paragraph 7).
- (2) The person is exempt if the person is not an authorised person in relation to that activity under this Act, but is authorised to carry on that activity by or by virtue of any other enactment.
- (3) The person is exempt if the person has a commission under section 1(1) of the Commissioners for Oaths Act 1889 (c. 10).

#### *European lawyers*

- 7 A European lawyer (within the meaning of the European Communities (Services of Lawyers) Order 1978 (S.I. 1978/1910) <sup>F3</sup>, as it has effect by virtue of regulation 5 of the Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2020]) is an exempt person for the purposes of carrying on an activity which is a reserved legal activity and which the European lawyer is entitled to carry on by virtue of that order <sup>F4</sup>, as it has effect by virtue of that regulation].

#### **Textual Amendments**

- F3** Words in Sch. 3 para. 7 inserted (31.12.2020) by The Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2020 (S.I. 2020/1342), reg. 1(1), Sch. para. 12(4)(a) (with Sch. para. 13)
- F4** Words in Sch. 3 para. 7 inserted (31.12.2020) by The Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2020 (S.I. 2020/1342), reg. 1(1), Sch. para. 12(4)(b) (with Sch. para. 13)

#### *Employers etc acting through exempt person*

- 8 (1) This paragraph applies where—
- (a) a person (“P”) carries on an activity (“the relevant activity”) which is a reserved legal activity,
  - (b) P carries on the relevant activity by virtue of an employee of P (“E”) carrying it on in E’s capacity as such an employee, and
  - (c) E is an exempt person in relation to the relevant activity.

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- (2) P is an exempt person in relation to the relevant activity to the extent that P carries on that activity by virtue of E so carrying it on.
- (3) This paragraph does not apply where E—
  - (a) carries on the relevant activity at the direction and under the supervision of an authorised person in relation to that activity, and
  - (b) is exempt in relation to that activity by virtue of paragraph 1(7), 3(3) or 4(2).
- (4) If P is a body, in this paragraph references to an employee of P include references to a manager of P.

*Further exempt persons*

- 9 (1) The Lord Chancellor may, by order, amend this Schedule so as to provide—
  - (a) for persons to be exempt persons in relation to any activity which is a reserved legal activity (including any activity which is a reserved legal activity by virtue of an order under section 24 (extension of reserved legal activities)),
  - (b) for persons to cease to be such persons, or
  - (c) for the amendment of any provision made in respect of an exempt person.
- (2) The Lord Chancellor may make an order under sub-paragraph (1) only on the recommendation of the Board.

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