

*Status: Point in time view as at 01/01/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Legal Services Act 2007, SCHEDULE 5. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

Section 22

#### AUTHORISED PERSONS

#### PART 1

#### CONTINUITY OF RIGHTS

##### *Rights of audience and conduct of litigation*

- 1 (1) For the purposes of section 18 (authorised persons), in the case of a person who is authorised by a listed body—
- (a) to exercise a right of audience before a court in relation to any proceedings, or
  - (b) to conduct litigation in relation to any proceedings,
- it is irrelevant whether the person's authorisation was granted before or on or after the appointed day.
- (2) The “listed bodies” are—
- (a) The Law Society,
  - (b) The General Council of the Bar,
  - (c) The Chartered Institute of Patent Attorneys,
  - (d) The Institute of Trade Mark Attorneys,
  - (e) The Association of Law Costs Draftsmen, and
  - (f) for the purposes of sub-paragraph (1)(a) only, The Institute of Legal Executives.
- (3) For the purposes of sub-paragraph (1), any authority conferred by section 31 of the Courts and Legal Services Act 1990 (c. 41) (barristers and solicitors deemed to have rights of audience and rights to conduct litigation) is to be disregarded (see paragraphs 4 and 7 below).

#### **Commencement Information**

**II** Sch. 5 para. 1 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

##### *Conveyancing services*

- 2 (1) For the purposes of section 18, in the case of a licensed conveyancer who is authorised to carry on an activity which is a reserved instrument activity by a conveyancing licence, it is irrelevant whether the licence was granted before or on or after the appointed day.

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- (2) For the purposes of this paragraph “conveyancing licence” means a licence to practise as a licensed conveyancer granted under Part 2 of the Administration of Justice Act 1985 (c. 61).

#### Commencement Information

**I2** Sch. 5 para. 2 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

#### *[<sup>F1</sup>Probate activities*

#### Textual Amendments

**F1** Sch. 5 para. 2A inserted (30.12.2009) by The Legal Services Act 2007 (Approved Regulators) Order 2009 (S.I. 2009/3233), arts. 1(1), 4

- 2A (1) This paragraph applies to a person who, immediately before the time paragraph 1 of Schedule 4 comes into force, has an exemption from the provisions of section 23(1) of the Solicitors Act 1974 (c. 47) (preparation of papers for probate etc by unqualified person) granted by a body within sub-paragraph (3).
- (2) For the purposes of section 18, the person is to be treated as if the exemption were an authorisation to carry on probate activities granted by the body in question at the time paragraph 1 of Schedule 4 comes into force.
- (3) The bodies are—
- (a) The Council for Licensed Conveyancers;
  - (b) The Institute of Chartered Accountants of Scotland;
  - (c) The Association of Chartered Certified Accountants.]

## PART 2

### RIGHTS DURING TRANSITIONAL PERIOD

#### *The transitional period*

- 3 (1) In this Part of this Schedule references to “the transitional period” are to the period which—
- (a) begins with the appointed day (within the meaning given by paragraph 19), and
  - (b) ends with the day appointed by the Lord Chancellor by order for the purposes of this paragraph.
- (2) Different days may be appointed under sub-paragraph (1)(b) for different purposes.
- (3) An order may be made under sub-paragraph (1)(b) only on the recommendation of the Board.

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#### Commencement Information

**I3** Sch. 5 para. 3 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

#### *Barristers etc*

- 4 (1) During the transitional period, every barrister is deemed to be authorised by the General Council of the Bar to carry on the activities in sub-paragraph (2).
- (2) Those activities are—
- (a) the exercise of a right of audience before every court in relation to all proceedings;
  - (b) reserved instrument activities;
  - (c) probate activities;
  - (d) the administration of oaths.
- (3) The authority conferred on a barrister by this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the General Council of the Bar.
- (4) A person is not authorised under sub-paragraph (1) unless the person has in force a certificate issued by the General Council of the Bar authorising the person to practise as a barrister.

#### Commencement Information

**I4** Sch. 5 para. 4 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (subject to art. 4 and with art. 9)

- 5 (1) During the transitional period, every registered European lawyer registered with the Inns of Court and the General Council of the Bar is deemed to be authorised by the General Council of the Bar to carry on activities which—
- (a) are within paragraph 4(2), and
  - (b) the registered European lawyer is entitled to carry on under his home professional title by virtue of the European regulations.
- (2) The authority conferred on a registered European lawyer by virtue of this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the General Council of the Bar (as they apply to the registered European lawyer by virtue of the European regulations).
- (3) In this paragraph—
- “European regulations” means the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119);
  - “home professional title” and “registered European lawyer” have the same meaning as in the European regulations.

#### Commencement Information

**I5** Sch. 5 para. 5 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

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- 6 During the transitional period members of the Bar not in actual practice are to continue to have the rights conferred by section 102A(2) of the Patents Act 1977 (c. 37) (right of audience, etc in proceedings on appeal from the comptroller).

**Commencement Information**

**I6** Sch. 5 para. 6 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

*Solicitors etc*

- 7 (1) During the transitional period—
- (a) every qualified solicitor,
  - (b) every legal partnership, and
  - (c) every body recognised under section 9 of the Administration of Justice Act 1985 (c. 61) (incorporated practices) (“a recognised body”),
- is deemed to be authorised by the Law Society to carry on the activities in subparagraph (2).
- (2) Those activities are—
- (a) the exercise of a right of audience before every court in relation to all proceedings;
  - (b) the conduct of litigation in relation to every court and all proceedings;
  - (c) reserved instrument activities;
  - (d) probate activities;
  - (e) the administration of oaths.
- (3) The authority conferred on a qualified solicitor, legal partnership or recognised body by this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the Law Society.
- (4) In this paragraph—
- “legal partnership” means a partnership in which a qualified solicitor, a registered European Lawyer or a body recognised under section 9 of the Administration of Justice Act 1985 (c. 61) is permitted to practise by virtue of rules made under that section or section 31 of the Solicitors Act 1974 (c. 47);
- “qualified solicitor” means a person who is qualified under section 1 of the Solicitors Act 1974 to act as a solicitor;
- “registered European lawyer” means a registered European lawyer within the meaning of the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) who is registered with the Law Society.

**Commencement Information**

**I7** Sch. 5 para. 7 wholly in force at 1.1.2010; Sch. 5 para. 7 not in force at Royal Assent see s. 211; Sch. 5 para. 7(4) in force for certain purposes at 31.3.2009 by S.I. 2009/503, art. 3, Sch. 5 para. 7 in force otherwise at 1.1.2010 by S.I. 2009/3250, art. 2(b)(i) (with art. 9)

- 8 (1) During the transitional period, every registered European lawyer registered with the Law Society is deemed to be authorised by the Law Society to carry on activities which—

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- (a) are within paragraph 7(2), and
  - (b) the registered European lawyer is entitled to carry on under his home professional title by virtue of the European regulations.
- (2) The authority conferred on a registered European lawyer by virtue of this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the Law Society (as they apply to the registered European lawyer by virtue of the European regulations).
- (3) In this paragraph—
- “European regulations” means the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119);
  - “home professional title” and “registered European lawyer” have the same meaning as in the European regulations.

**Commencement Information**

**I8** Sch. 5 para. 8 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

- 9
- (1) During the transitional period, solicitors are to continue to have the rights conferred on them by subsection (1) of section 102A of the Patents Act 1977 (c. 37) (rights of audience, etc in proceedings on appeal from the comptroller).
  - (2) During that period, registered European lawyers are to continue to have the rights conferred on them by that subsection by virtue of the European regulations.
  - (3) In this paragraph “European regulations” and “registered European lawyer” have the same meaning as in paragraph 8.

**Commencement Information**

**I9** Sch. 5 para. 9 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

*Legal Executives*

- 10
- (1) During the transitional period, a person authorised by the Institute of Legal Executives to practise as a member of the profession of legal executives is deemed to be authorised by that Institute to administer oaths.
  - (2) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Institute of Legal Executives.
  - (3) A person is not authorised under sub-paragraph (1) unless the person has in force a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive.

**Commencement Information**

**I10** Sch. 5 para. 10 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

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*Licensed conveyancers*

- 11 (1) During the transitional period every individual who holds a conveyancing licence is deemed to be authorised by the Council for Licensed Conveyancers to administer oaths.
- (2) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Council.
- (3) During that period, every conveyancing partnership and every body recognised under section 32 of the Administration of Justice Act 1985 (c. 61) (bodies corporate entitled to provide conveyancing services) is deemed to be authorised by the Council—
- (a) to carry on conveyancing services, and
  - (b) to administer oaths.
- (4) The authority conferred by sub-paragraph (3) is exercisable in accordance with and subject to—
- (a) in the case of a body recognised under section 32 of the Administration of Justice Act 1985, any condition subject to which its recognition has effect, and
  - (b) the regulatory arrangements of the Council.
- (5) In this section “conveyancing partnership” means a partnership at least some of the members of which are licensed conveyancers.
- (6) For the purposes of this paragraph a conveyancing licence is to be treated as not in force during any period when it is suspended.

**Commencement Information**

**III** Sch. 5 para. 11 wholly in force at 1.1.2010, see s. 211 and [S.I. 2009/3250](#), [art. 2\(b\)\(ii\)](#) (with [art. 9](#))

*Notaries public*

- 12 (1) During the transitional period, every duly certificated notary is deemed to be authorised by the Master of the Faculties to carry on the activities in sub-paragraph (2).
- (2) Those activities are—
- (a) reserved instrument activities;
  - (b) probate activities;
  - (c) notarial activities;
  - (d) the administration of oaths.
- (3) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Master of the Faculties.
- (4) In this paragraph “duly certificated notary” means a notary who either—
- (a) has in force a practising certificate as a solicitor issued under the Solicitors Act 1974 (c. 47), and is duly entered in the Court of Faculties of the Archbishop of Canterbury in accordance with rules made by the Master of the Faculties, or

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- (b) has in force a practising certificate as a public notary issued by the said Court of Faculties in accordance with rules so made.

**Commencement Information**

**I12** Sch. 5 para. 12 wholly in force at 1.1.2010; Sch. 5 para. 12 not in force at Royal Assent see s. 211; Sch. 5 para. 12(4) in force for certain purposes at 31.3.2009 by S.I. 2009/503, art. 3, Sch. 5 para. 12 in force otherwise at 1.1.2010 by S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

- 13 (1) During the transitional period, a person (“P”) is an exempt person in relation to the carrying on of an activity (“the relevant activity”) which is a notarial activity if—
- (a) 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
- (b) E is an authorised person in relation to the relevant activity.
- (2) If P is a body, in this paragraph references to an employee of P include references to a manager of P.

**Commencement Information**

**I13** Sch. 5 para. 13 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

*Patent attorneys*

- 14 (1) During the transitional period, every registered patent attorney is deemed to be authorised by the Chartered Institute of Patent Attorneys to carry on reserved instrument activities.
- (2) During that period, every authorised patent attorney is deemed to be authorised by the Chartered Institute of Patent Attorneys to administer oaths.
- (3) During that period, every patent attorney body is deemed to be authorised by the Chartered Institute of Patent Attorneys to carry on the activities in sub-paragraph (4).
- (4) Those activities are any activities which are reserved legal activities within sub-paragraph (5) and which—
- (a) if the body is a partnership, any partner who is a registered patent attorney is authorised to carry on;
- (b) if the body is a body corporate, any director who is a registered patent attorney is authorised to carry on.
- (5) Those activities are—
- (a) the exercise of a right of audience;
- (b) the conduct of litigation;
- (c) reserved instrument activities;
- (d) the administration of oaths.
- (6) The authority conferred by any of sub-paragraphs (1) to (3) is exercisable in accordance with and subject to the regulatory arrangements of the Chartered Institute of Patent Attorneys.
- (7) In this paragraph—

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“authorised patent attorney” means a registered patent attorney who is authorised by the Chartered Institute of Patent Attorneys to carry on one or both of the following activities—

- (a) the exercise of a right of audience;
- (b) the conduct of litigation;

“patent attorney body” means—

- (a) a partnership all the partners of which are registered patent attorneys,
- (b) a body corporate all the directors of which are registered patent attorneys,
- (c) a partnership or body corporate which satisfies the conditions prescribed under section 279 of the Copyright, Designs and Patents Act 1988 (c. 48), or
- (d) a body corporate to which section 276(4) of that Act applies;

“registered patent attorney” has the meaning given by section 275(2) of that Act;

and, in the case of a patent attorney body to which section 276(4) of that Act applies, the reference in sub-paragraph (4)(b) to a director includes a reference to the manager (within the meaning of section 276(4) of that Act) of the company.

#### Commencement Information

**I14** Sch. 5 para. 14 wholly in force at 1.1.2010; Sch. 5 para. 14 not in force at Royal Assent see s. 211; Sch. 5 para. 14(7) in force for certain purposes at 31.3.2009 by S.I. 2009/503, art. 3, Sch. 5 para. 14 in force otherwise at 1.1.2010 by S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

- 15 (1) During the transitional period registered patent attorneys are to continue to have the rights conferred by section 102A(2) of the Patents Act 1977 (c. 37) and section 292 of the Copyright, Designs and Patents Act 1988 (c. 48).
- (2) In this paragraph “registered patent attorney” has the same meaning as in paragraph 14.

#### Commencement Information

**I15** Sch. 5 para. 15 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

#### *Trade mark attorneys*

- 16 (1) During the transitional period, every registered trade mark attorney is deemed to be authorised by the Institute of Trade Mark Attorneys to carry on reserved instrument activities.
- (2) During that period, every authorised trade mark attorney is deemed to be authorised by the Institute of Trade Mark Attorneys to administer oaths.
- (3) During that period, every trade mark attorney body is deemed to be authorised by the Institute of Trade Mark Attorneys to carry on the activities in sub-paragraph (4).
- (4) Those activities are any activities which are reserved legal activities within sub-paragraph (5) and which—



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- (a) if the body is a partnership, any partner who is a registered trade mark attorney is authorised to carry on, or
  - (b) if the body is a body corporate, any director who is a registered trade mark attorney is authorised to carry on.
- (5) Those activities are—
- (a) the exercise of a right of audience;
  - (b) the conduct of litigation;
  - (c) reserved instrument activities;
  - (d) the administration of oaths.
- (6) The authority conferred by any of sub-paragraphs (1) to (3) is exercisable in accordance with and subject to the regulatory arrangements of the Institute of Trade Mark Attorneys.
- (7) In this paragraph—
- “authorised trade mark attorney” means a registered trade mark attorney who is authorised by the Institute of Trade Mark Attorneys to carry on one or both of the following activities—
- (a) the exercise of a right of audience;
  - (b) the conduct of litigation;
- “trade mark attorney body” means—
- (a) a partnership all the partners of which are registered trade mark attorneys,
  - (b) a body corporate all the directors of which are registered trade mark attorneys, or
  - (c) a partnership or body corporate which satisfies the conditions prescribed under section 85 of the Trade Marks Act 1994 (c. 26);
- “registered trade mark attorney” has the same meaning as in the Trade Marks Act 1994.

#### **Commencement Information**

**116** Sch. 5 para. 16 wholly in force at 1.1.2010; Sch. 5 para. 16 not in force at Royal Assent see s. 211; Sch. 5 para. 16(7) in force for certain purposes at 31.3.2009 by S.I. 2009/503, art. 3, Sch. 5 para. 16 in force otherwise at 1.1.2010 by S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

#### *Law costs draftsmen*

- 17 (1) During the transitional period, every authorised member of the Association of Law Costs Draftsmen is deemed to be authorised by that Association to administer oaths.
- (2) In this paragraph, “authorised member of the Association of Law Costs Draftsmen” means a member of that Association who has been authorised by that Association to carry on one or both of the following activities—
- (a) the exercise of a right of audience;
  - (b) the conduct of litigation.
- (3) The authority conferred by sub-paragraph (1) is exercisable in accordance with and subject to the regulatory arrangements of the Association of Law Costs Draftsmen.

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#### Commencement Information

**I17** Sch. 5 para. 17 wholly in force at 1.1.2010; Sch. 5 para. 17 not in force at Royal Assent see s. 211; Sch. 5 para. 17(2) in force for certain purposes at 31.3.2009 by S.I. 2009/503, art. 3, Sch. 5 para. 17 in force otherwise at 1.1.2010 by S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

- 18 (1) During the transitional period, a person (“P”) is an exempt person in relation to the carrying on of an activity (“the relevant activity”) which is a reserved legal activity within sub-paragraph (2), if—
- (a) 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
  - (b) E is an authorised member of the Association of Law Costs Draftsmen (within the meaning of paragraph 17(2) of this Schedule).
- (2) The reserved legal activities mentioned in sub-paragraph (1) are—
- (a) the exercise of a right of audience;
  - (b) the conduct of litigation;
  - (c) the administration of oaths.
- (3) If P is a body, in this paragraph references to an employee of P include references to a manager of P.

#### Commencement Information

**I18** Sch. 5 para. 18 wholly in force at 1.1.2010; Sch. 5 para. 18 not in force at Royal Assent see s. 211; Sch. 5 para. 18(2) in force for certain purposes at 31.3.2009 by S.I. 2009/503, art. 3, Sch. 5 para. 18 in force otherwise at 1.1.2010 by S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

### PART 3

#### INTERPRETATION

- 19 In this Schedule—
- “the appointed day” means the day appointed for the coming into force of section 13 (entitlement to carry on a reserved legal activity);
- “conveyancing licence” has the meaning given by paragraph 2.

#### Commencement Information

**I19** Sch. 5 para. 19 wholly in force at 1.1.2010, see s. 211 and S.I. 2009/3250, art. 2(b)(ii) (with art. 9)

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