

Updates – May 2009

General

UK VAT rate was reduced from 17.5% to 15% on 1 December 08. The rate will stay at 15% until 1 January 2010, when it will go back to 17.5%. All references in our books to VAT should now be read at the new rate.

As examinees should familiarise themselves with the law as it stands on the date of the exam, you should assume while writing your exams that the VAT rate is 15%, unless otherwise is advised.

Property

1. Land Law & Conveyancing - New Land Registry Public Guide replaces the current guide. The new guide can be downloaded at http://www1.landregistry.gov.uk/assets/library/documents/public_guide_001.pdf

2. Stamp Duty Land Tax exemption - section 12.2.2 - Stamp Duty Land Tax (SDLT): Temporary exemption for residential property costing not more than £175,000.

The Chancellor of the Exchequer announced that from 3 September 2008 he will introduce a temporary exemption ('holiday') from SDLT for acquisitions of residential property worth not more than £175,000. The exemption will be available where the effective date of the land transaction (normally the date of completion) is on or after 3 September 2008 and before 3 September 2009. There are no circumstances in which this exemption will be available for any land transactions either before 3 September 2008 or after 3 September 2009.

For more information, please visit at; <http://www1.landregistry.gov.uk/legislation/stampduty/>

3. Amendments to Land Registration Rules 2003

<http://www1.landregistry.gov.uk/legislation/actsrules/amendsi/>

- a) The Land Registration (Amendment) Rules 2008
- b) The Commonhold (Land Registration) (Amendment) Rules 2008
- c) The Land Registration (Proper Office) (Amendment) Order 2008

These statutory instruments all came into force on 10 November 2008:

The Land Registration (Amendment) Rules 2008 (“the amendment rules”) further amend the Land Registration Rules 2003 (“the principal rules”), which make detailed provision for land registration in England and Wales. The amendments are miscellaneous and follow a general review of the principal rules carried out by Land Registry.

The Commonhold (Land Registration) (Amendment) Rules 2008 (“the commonhold amendment rules”) amend the Commonhold (Land Registration) Rules 2004 to take account of the change to a particular form prescribed by the principal rules and altered by the amendment rules, and to provide for the use of “statements of truth” in place of statutory declarations (there being similar provisions in the amendment rules).

The Land Registration (Proper Office) (Amendment) Order 2008 (“the proper office amendment order”) amends the Land Registration (Proper Office) Order 2007 so that the definition of “conveyancer” in the Land Registration (Proper Office) Order 2007 is the same as that in the principal rules as amended by the amendment rules.

4. Identity evidence for Land Registry

<http://www.lawsociety.org.uk/productsandservices/practicenotes/landregistryid/1618.article>

From 24 November 2008 the Land Registry requires most applicants to give details of the conveyancers acting for all the other parties to the transaction and, where a party is unrepresented, to provide evidence of that party's identity. The requirement has been introduced to help combat fraud.

This practice note provides advice on managing the process and highlights areas of risk.

5. Home Information Pack

<http://www.businesslink.gov.uk/bdotg/action/layer?r.11=1073858799&topicId=1081563908&r.lc=en&r.l2=1081626981&r.s=t1>

From 6 April 2009 important changes are being introduced, both to the content of HIPS and to make them available at the first point a property is marketed. A property can only be put on the market when all the required HIP documents have been commissioned and paid for, or a commitment to pay has been made and a Pack is available containing the following documents as a minimum:

- index
- the new Property Information Questionnaire (PIQ)
- Energy Performance Certificate (EPC) or Predicted Energy Assessment (PEA)
- sustainability information (for new homes only)
- sale statement
- evidence of title

In addition, the current first day market exemption will come to an end, meaning that the basic HIP must be available before the seller can begin marketing their property. Local searches can still be included in the HIP up to 28 days after the first day of marketing.

The new Property Information Questionnaire will be a compulsory document for inclusion in the HIP. The PIQ is designed to be completed by a seller, providing simple, useful information about a property. This can help to inform prospective buyers' decisions about whether to view, or make an offer on a particular property.

In addition, the use of insurance in personal searches to cover missing data will end. Every property search in a HIP must now contain all the required search information.

These changes are being introduced to Home Information Packs so that better information is available at the beginning of the home buying and selling process, and before buyers incur costs. Informed choice by buyers at the start can help reduce delays later on and wasted time for sellers.

6. Nil Rate Band

The Inheritance Tax (IHT) nil rate band increased on 6th April 2009, from £312,000.00 to £325,000.00.

An increase of £13,000.00 in the band at an IHT rate of 40% means a potential IHT saving in the new tax year of £5,200.00 for an individual and £10,400.00 for a married couple or civil partnership where the survivor is able to claim both their own and the transferable nil-rate band.

7. Levels of Statutory Legacy - The Family Provision (Intestate Succession) Order 2009)

The Ministry of Justice has announced a big increase in the levels of statutory legacy, ie the amount that surviving spouses or civil partners are allowed to inherit if their spouse/civil partner dies without leaving a will.

On 1 February 2009 the statutory legacy increased to:

- £250,000 (from £125,000) where there is a surviving spouse or civil partner and children
- £450,000 (from £200,000) where there is a surviving spouse or civil partner and parents or siblings, but no children.

The statutory limits only apply in certain circumstances. In some situations, the surviving spouse or civil partner, or the children, can inherit without any limit. The full rules on inheritance in intestacy are as follows:

1. If there is a husband, wife or civil partner, and children:

- The spouse/partner gets the personal chattels, the first £125,000 and a life interest in half of what is left
- The children of the deceased, including illegitimate and adopted children, share between them half what is left straight away, if they are 18 or over; and the other half when the surviving parent dies.

2. If there is a husband, wife or civil partner, and relatives but no children:

- The husband or wife gets the personal chattels, the first £200,000 and half what is left.
- The parents of the dead person, or if they have died, the brothers and sisters or their descendants, share the other half of what is left.

3. If there is a surviving husband, wife or civil partner, but no other relatives:

The surviving spouse/partner gets everything.

4. If there are children, but no living husband, wife or civil partner:

The children share everything equally.

5. If there is no husband, wife, civil partner or children:

Everything will pass to the next available group of relatives.

6. If there are no available relatives:

Everything goes to the State.

The statutory limits were last increased in 1993 The Government has acted because of concerns that the levels are too low. This latest follows a consultation by the Ministry of Justice.

Civil Litigation

http://www.justice.gov.uk/civil/procrules_fin/#updates

Part 6 Service

Part 6 of the CPR which deals with the service of documents has been reviewed as part of the ongoing programme of reviewing existing rules. All of Part 6 has been revised with the exception of documents to be served outside of the jurisdiction.

Service – Transitional arrangements

The new rules apply to documents served after the commencement date of 1 October 2008.

1. Under the current rules the claimant has four months from the date of issue in which to serve a claim. If the claim has not been served by the last day of this period, it is then out of time. Under the new rules the claim can be dispatched on the last day of the four month period, in effect allowing the claimant further time for service.
2. Under the new provisions the time for service of a claim for a new tenancy or a possession claim under the Landlord and Tenant Act will move from two months to four months. So if the two months expires on 30 September and the claim has not been served it is out of time. However, if the two months run out on 1 October the claimant has a further two months to serve.
3. Under the new rules the deemed service of a claim form will be two business days after it is dispatched, by whatever means.

48th Update November 2008

The 48th Update to the Civil Procedure Rules introduced one change.

A new Pre-Action Protocol for possession claims based on mortgage or home purchase plan arrears in respect of residential property and consequent amendment to the Practice Direction on Protocols

49th Update April 2009

The 49th Update to the Civil Procedure Rules introduces changes in a large number of areas. The changes come into force on 6 April 2009 unless stated otherwise. You may want to note the following amendments:

Consequential amendments are made to Part 1, Part 3, Part 7, Part 14, Part 16, Part 30, and RSC O.115 and to PD55, PD64, the Practice Direction on Devolution Issues, the Pre Action Protocol for Judicial review and to the Glossary.

Part 7 How to start proceedings – the Claim Form and PD7 Production Centre

Amendments to allow for claims to be issued electronically through the Money Claim Online and Claim Production Centre where the particulars of claim are to be served separately.

PD7D Claims for the recovery of taxes

Amendments to extend the list of taxes and duties subject to the streamlined procedure set out in PD7D. These include student loan repayments deductible by or recoverable from the employer, VAT, Insurance Premium Tax, Stamp Duty Land Tax, Environmental Taxes, and various Duties of Custom and Excise.

Part 14 Admissions

An amendment is made to Rule 14.1A(2)(a) consequential on the new Practice Direction on Pre Action Conduct.

Part 26 Case Management

For claims issued on or after 6 April 2009 the financial limit of the fast track procedure is increased from £15,000 to £25,000. See also changes to Part 46.

Part 44 General Rules about Costs and PD supplementing Part 43-48

New rules are inserted to allow applications for and variation of costs capping orders on future costs and the Practice Direction supplementing Parts 43-48 is also amended.

Part 46 Fast Track Trial Costs

The table setting out the amount of fast track trial costs, which may be awarded by the court, is amended. An additional entry of £1,650 is inserted for those fast track cases where the value of the claim is more than £15,000. The original entry is modified to cover claims in the £10,000 - £15,000 band.

PD52 Appeals

As a consequence of the creation of a new tribunal systems, including the new Upper Tribunal, PD52 is amended. These changes come into force on 9 January 2009.

PD54D Judicial Review (Administrative Court (Venue))

A new Practice Direction supplementing Part 54 is inserted setting out the procedures for issue, administration and hearing of cases outside London and Cardiff.

Part 55 Possession Claims

This Part is amended to extend the period of notice about a possession claim that must be given by the claimant to the occupiers of the relevant property.

Part 70 General Rules about Enforcement of Judgments and Orders and PD 70

The Part and Practice Direction are amended to include provisions to enable the enforcement of negotiated settlements in employment tribunal cases as if payable under a court order.

Part 75 Traffic Enforcement and PD75

This amendment enables requests for a review of a court officer's decision to be determined without an oral hearing unless the person making the request asks for a hearing or the court orders a hearing. Provision is also made to enable an authority to request reissue of warrants (within the 12 month validity period) where the respondent's address has changed since the issue of the warrant.

Part 79 Financial Restrictions proceedings under the Counter-Terrorism Act 2008

This new Part came into force on 4 December 2008 and provides for financial restrictions proceedings, including the application to the High Court to set aside a financial restrictions decision.

CCR Order 26 Warrants of Execution, Delivery and Possession

This amendment requires a person requesting a warrant of possession to be issued to file a request certifying that the land, which is subject of the judgment or order, has not been vacated.

Practice Direction – Protocols

A new Practice Direction is created on the pre-action conduct of parties. This includes the requirement in business debt claims for the creditor to provide information about sources of advice to the debtor before issuing proceedings.

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Part 70 General Rules about Enforcement of Judgments and Orders and PD 70

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Part 75 Traffic Enforcement and PD75

This amendment enables requests for a review of a court officer's decision to be determined without an oral hearing unless the person making the request asks for a hearing or the court orders a hearing. Provision is also made to enable an authority to request reissue of warrants (within the 12 month validity period) where the respondent's address has changed since the issue of the warrant.

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Professional Conduct and Accounts

1. Indemnity Rules - footnote 104 (section 13.1.4) of the Professional Conduct textbook - the indemnity insurance for a minimum of £2M instead of £1M.

2. Financial Services - Money Laundering - section 9.1.1 (e) - Tipping off - please see below:

Tipping off

The TACT Regulations 2007 and the POCA Regulations 2007 repealed the s333 POCA tipping off offence. It has been replaced by section 333A which creates two new offences. S342(1) has also been amended to reflect these new offences.

Tipping off – in the regulated sector

There are two tipping off offences in S333A of POCA. They apply only to business in the regulated sector.

- **S333A(1)** – disclosing a suspicious activity report (SAR). It is an offence to disclose to a third person that a SAR has been made by any person to the police, HM Revenue and Customs, SOCA or a nominated officer, if that disclosure might prejudice any investigation that might be carried out as a result of the SAR. This offence can only be committed:
 - **after** a disclosure to SOCA or a nominated officer
 - if you know or suspect that by disclosing this information, you are likely to prejudice any investigation related to that SAR
 - the information upon which the disclosure is based came to you in the course of business in the regulated sector
- **S333A(3)** – disclosing an investigation. It is an offence to disclose that an investigation into a money laundering offence is being contemplated or carried out if that disclosure is likely to prejudice that investigation. The offence can only be committed if the information on which the disclosure is based came to the person in the course of business in the regulated sector. The key point is that you can commit this offence, even where you are unaware that a SAR was submitted

Prejudicing an investigation – outside the regulated sector

Section 342(1) contains an offence of prejudicing a confiscation, civil recovery or money laundering investigation, if the person making the disclosure knows or suspects that an investigation is being, or is about to be conducted. Section 342(1) was amended by paragraph 8 of the TACT and POCA Regulations 2007. The offence in s342 (2) (a) only applies to those outside the regulated sector. The offence in s342 (2) (b) applies to everyone.

You only commit the offence in s342 (2) (a) if you knew or suspected that the disclosure would, or would be likely to prejudice any investigation.

Defences

The following disclosures are permitted:

- S333B - disclosures within an undertaking or group, including disclosures to a professional legal adviser or relevant professional adviser
- S333C - disclosures between institutions, including disclosures from a professional legal adviser to another professional legal adviser
- S333D - disclosures to your supervisory authority
- S333D(2) - disclosures made by professional legal advisers to their clients for the purpose of dissuading them from engaging in criminal conduct

A person does not commit the main tipping off offence if he does not know or suspect that a disclosure is likely to prejudice an investigation.

s333B – Disclosures within an undertaking or group etc

It is not an offence if an employee, officer or partner of a firm discloses that a SAR has been made if it is to an employee, officer or partner of the same undertaking.

A solicitor will not commit a tipping off offence if a disclosure is made to another lawyer either:

- within a different undertaking, if both parties carry on business in an EEA state
- in a country or territory that imposes money laundering requirements equivalent to the EU and both parties share common ownership, management or control

s333C – disclosures between institutions etc

A solicitor will not commit a tipping off offence if **all** the following criteria are met:

- The disclosure is made to another lawyer in an EEA state, or one with an equivalent AML regime.
- The disclosure relates to a client or former client of both parties, or a transaction involving them both, or the provision of a service involving them both.
- The disclosure is made for the purpose of preventing a money laundering offence.
- Both parties have equivalent professional duties of confidentiality and protection of personal data.

S333D(2) – limited exception for professional legal advisers

A solicitor will not commit a tipping off offence if the disclosure is to a client and it is made for the purpose of dissuading the client from engaging in conduct amounting to an offence. This exception and the tipping off offence in s333A apply to those carrying on activities in the regulated sector.

Prejudicing an investigation

S342(4) – professional legal adviser exemption

It is a defence to a S342(1) offence that a disclosure is made by a legal adviser to a client, or a client's representative, in connection with the giving of legal advice or to any person in connection with legal proceedings or contemplated legal proceedings.

Making enquiries of a client

You should make preliminary enquiries of your client, or a third party, to obtain further information to help you to decide whether you have a suspicion. You may also need to raise questions during a retainer to clarify such issues.

There is nothing in POCA which prevents you making normal enquiries about your client's instructions, and the proposed retainer, in order to remove, if possible, any concerns and enable the firm to decide whether to take on or continue the retainer.

These enquiries will only be tipping off if you disclose that a SAR has been made to SOCA or a nominated officer or that a money laundering investigation is being carried out or contemplated. The offence of tipping off only applies to the regulated sector.

It is not tipping-off to include a paragraph about your obligations under the money laundering legislation in your firm's standard client care letter.

3. A number of new rules and regulations, which will have an impact on the Code of Conduct, came into force as of 31 March 2009, including:

- a) Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment Rules (2009)
- b) Solicitors' Accounts (Legal services Act) Amendment Rules (2009)
- c) SRA Practising Regulations (2009)
- d) SRA Recognised Bodies Regulations (2009)
- e) Solicitors' Financial Services (Scope) Amendment Rules (2009)
- f) Solicitors' Indemnity Insurance (Amendment) Rules (2009)

These rules and regulations were made by the SRA Board on 24 July 2008. The Solicitors' Code of Conduct 2007 was amended on 31 March 2009 as part of a general updating of the rules to introduce firm-based regulation and legal disciplinary practices as provided for in the Legal Services Act 2007.

For more information and to download the new regulation please visit <http://www.sra.org.uk/sra/legal-services-act/lsa-new-rules.page>

Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment Rules 2009

The Solicitors' Code of Conduct was amended on 31 March 2009 to support firm-based regulation and LDPs. The most significant changes are made to

- rule 12 (framework of practice);
- rule 14 (incorporated practice—this rule will be re-titled "recognised bodies"); and
- rule 20 (requirements of practice).

Collectively, the rules above establish the regulatory structure for the new regime.

Consequential amendments appear throughout the Code, along with various other changes. These ensure that our rules apply to all "managers" and employees in firms. Significant changes include

- rule 5 (persons "qualified to supervise");
- rule 7 (publicity);
- rule 9 (referrals of business).

Solicitors' Accounts (Legal Services Act) Amendment Rules 2009

The majority of changes to the Solicitors' Accounts Rules 1998 (SAR) reflect the introduction of LDPs and firm-based regulation.

The SAR cover sole practitioners, partnerships, companies, LLPs, practices with non-solicitor lawyers as managers, and practices with up to 25 per cent of managers who are not legally qualified. The SAR also apply to the individual managers and employees of those practices, and to in-house lawyers.

The position of managers or employees in firms regulated by other approved regulators, such as the Council for Licensed Conveyancers, is dealt with in rule 5(d) and note (iii) to rule 5. All managers are permitted to authorise client account withdrawals but need to have an appropriate understanding of the requirements of the rules. Note the relaxation of the criteria relating to when a FILEX or licensed conveyancer may sign on client account.

The Legal Services Act has abolished the concept of a "controlled trust", so all money held by a practice is either client money or office money. This means that the same interest provisions apply to all client money, including money previously defined as "controlled trust money".

The statutory basis for interest certificates has been removed, so interest complaints are now dealt with by the Legal Complaints Service.

The Act also enables the introduction of more-flexible, risk-based provisions for the delivery of accountants' reports, and requires the introduction of a mandatory whistleblowing duty on reporting accountants.

Finally, the opportunity has been taken to make some clarificatory changes:

- rule 2(1) on the mandatory nature of the notes to the rules;
- rule 15(2)(d) on using a client account for paying a sum in lieu of interest;
- note (viii) to rule 15 on the aggregation of client accounts;
- note (iii) to rule 16 and note (iia) to rule 17 on including money withheld from a client account in the monthly reconciliations;

paragraph 2.2 of the Guidelines for accounting procedures and systems on access to the online version of the SAR;

paragraph 5.6 of the Guidelines on including digital images of paid cheques in a firm's retention policies and systems.

SRA Recognised Bodies Regulations 2009

These new regulations replace the Recognised Bodies Regulations 2007. They require all new partnerships, as well as companies, LLPs, etc. to apply for recognition before being able to provide legal services, and they deal with

- the application process;
- initial recognition;
- renewal of recognition;
- approval of a non-lawyer individual as suitable to be a "manager";
- conditions on recognition, etc.

SRA Practising Regulations [2009]

These new regulations, which we expect to come into force on [1 July 2009], will deal with

- applications for practising certificates;
- applications to be a recognised sole practitioner;
- the register of solicitors with practising certificates;
- the register of European lawyers, and the register of foreign lawyers.

Solicitors' Financial Services (Scope) Amendment Rules 2009

These rules make the necessary consequential but fairly minor amendments to support LDPs and firm-based regulation, and mainly concern redefining certain terms.

Solicitors' Indemnity Insurance (Amendment) Rules 2009

These rules include consequential amendments to support LDPs and firm-based regulation. They provide that

individual solicitors and individual registered European lawyers (REs) and registered foreign lawyers (RFLs) who are engaged in private practice should continue to be covered by compulsory professional indemnity insurance through their firms;

the compulsory professional indemnity insurance requirement should apply to all entities authorised by the SRA;

any partnership or sole practice that can only be authorised by the SRA should be covered by the compulsory indemnity insurance scheme in order to protect clients, even if it has not obtained recognition by the SRA nor has it been held out as being regulated by the SRA;

any unauthorised partnership or sole practice that can be authorised by the SRA or another approved regulator should not be covered by the SRA's compulsory indemnity insurance scheme;

firms authorised by another regulator should be excluded from the SRA's compulsory professional indemnity scheme;

firms that cannot be authorised by any regulator should be excluded from the SRA's compulsory professional indemnity scheme.

Legal Services Board (LSB)

<http://www.legalservicesboard.org.uk/index.htm>

<http://www.lawsociety.org.uk/newsandevents/topics/lisa2007/lisb.page>

Powers and duties

The Legal Services Board (LSB) is an overseer and supervisor of the regulatory framework in England and Wales, and all the approved regulators. Its chair and members are appointed by the Lord Chancellor. Its statutory powers and duties include:

- authorising bodies to be approved regulators of legal services
- authorising bodies to license alternative business structures
- approving professional rules, and directing changes to them if this proves necessary and justifiable
- directing approved regulators to take a particular action, and applying sanctions if they do not
- commissioning, monitoring and investigating research into the legal services market
- recommending to the Lord Chancellor which services should be reserved services, and therefore compulsorily regulated.

Relationship with approved regulators

The Legal Services Board must seek to resolve matters informally before exercising its powers. It can only intervene in a decision of the approved regulator where the regulator's actions were plainly unreasonable. It must also exercise its functions according to its regulatory objectives, set out in Section 1 of the Legal Services Act 2007. These include protecting and promoting the public interest, and promoting and maintaining adherence to the professional principles.

Safeguarding the independence of the profession

Maintaining the independence of the profession is one of the regulatory objectives for the LSB contained in the act. The Lord Chancellor can only appoint its chair and members after proper consultation with the Lord Chief Justice. The Lord Chancellor has a statutory duty to uphold the rule of law, and will also be expected to follow the Office for the Commissioner of Public Appointments (OCPA) guidelines in appointments to the LSB.

The involvement of the Lord Chief Justice further helps to ensure that there can be no arbitrary elements in the procedure, and that no appointment is political in nature.

The timetable

The Legal Services Board and its chair, David Edmonds have now been appointed. The LSB is expected to be fully operational by spring 2010.