

Section 279: Power to prescribe conditions etc for mixed partnerships and bodies corporate

279.01 This empowers the Secretary of State to make rules governing the composition and business practices of partnerships and bodies corporate doing business as patent agents or European patent attorneys, where not all the partners or directors are qualified persons ("mixed" firms). Such firms were not permitted under the old law with the exception of the special case of pre-1917 companies (section 114(2)(a) of the Patents Act 1977, re-enacted as section 276(4)). Such rules have only been made in respect of s.276 (see 276.03.1 and 276.04.1.)

Section 279(1)

The Secretary of State may make rules -

- (a) prescribing the conditions to be satisfied for the purposes of section 276 (persons entitled to describe themselves as patent agents) in relation to a partnership where not all the partners are qualified persons or a body corporate where not all the directors are qualified persons, and*
- (b) imposing requirements to be complied with by such partnerships and bodies corporate.*

279.02 The Secretary of State is empowered to make rules for the purposes of section 276 relating to partnerships or bodies corporate where not all the partners or directors are qualified persons (ie registered patent agents). A distinction is made between conditions to be satisfied and requirements to be complied with:

Paragraph (a) of subsection (1) provides that the rules may specify the conditions to be satisfied by a partnership or body corporate in order that it may describe itself, and carry on business, under the reserved title.

Paragraph (b) provides that requirements may be imposed on such firms.

Section 279(2)

The rules may, in particular -

- (a) prescribe conditions as to the number or proportion of partners or directors who must be qualified persons;*
- (b) impose requirements as to -*
 - (i) the identification of qualified and unqualified persons in professional advertisements, circulars or letters issued by or with the consent of the partnership or body corporate and which relate to it or to its business; and*
 - (ii) the manner in which a partnership or body corporate is to organise its affairs so as to secure that qualified persons exercise a sufficient degree of control over the activities of unqualified persons.*

279.03 Subsection (2) sets out in more detail the particular topics that may be addressed by the rules. Paragraph (a) provides that the conditions prescribed by the rules may stipulate the number or proportion of members or directors who must be qualified persons.

Paragraph (b) provides that the requirements to be complied with may relate to:-

- i. the identification of qualified and unqualified persons in letters and other documents issued under the auspices of the firm
- ii. the way in which the affairs of the firm are organised in order that unqualified persons are sufficiently supervised by qualified persons.

279.04 The reason for distinguishing between "conditions" and "requirements" is that the "conditions" specify what must be done by a partnership or company in order to be permitted in terms of section 276 to carry on business using the reserved titles. (Such firms are also entitled to other benefits under section 280.) They therefore relate to what is relatively constant (ie the composition of the firm). If a firm fails to meet the "conditions" this is likely to be an ongoing state of affairs, and if such a firm carries on business using a reserved title an offence will be committed under section 276(6). The "requirements" on the other hand relate to the way a firm conducts its business. The requirements which can be imposed under sub-paragraph (i) of subsection 2(b) are intended to ensure that clients and others are fully aware of the type of firm with which they are dealing. The requirements which can be imposed under sub-paragraph (ii) are intended to guard against possible abuses of the kind where a firm satisfies the conditions for using the reserved titles but inadequately supervises its unqualified staff.

Section 279(3)

Contravention of a requirement imposed by the rules is an offence for which a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

279.05 Contravention of a "requirement" imposed by the rules is an offence. As mentioned above, a firm not meeting the "conditions" is not allowed to use the reserved titles and if it did so would be committing an offence. However, the "requirements" are imposed on firms which may lawfully conduct business within the terms of the "conditions". Without this specific provision there would be no clear sanction against breach of the rules imposing requirements.

Section 279(4)

The Secretary of State may make rules prescribing for the purposes of section 277 the number or proportion of partners of a partnership or directors of a body corporate who must be qualified persons in order for the partnership or body to take advantage of that section.

279.06 The Secretary of State is empowered to make rules prescribing the numbers or proportions of persons in partnerships and bodies corporate who must be qualified persons (ie on the European list) in order to take advantage of section 277.

Section 279(5)

In this section "qualified person" -

- (a) *in subsections (1) and (2), means a person who is a registered patent agent, and*
- (b) *in subsection (4), means a person who is on the European list.*

Section 279(6)

Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.