



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

An Act to consolidate certain enactments relating to solicitors and notaries public in Scotland. [1st August 1980]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### ORGANISATION

##### *The Law Society of Scotland*

#### **1 Establishment and objects of Law Society of Scotland**

- (1) The Law Society of Scotland (referred to in this Act as " the Society ") shall continue to exist and shall exercise the functions conferred upon it by this Act.
- (2) The objects of the Society shall include the promotion of—
  - (a) the interests of the solicitors' profession in Scotland; and
  - (b) the interests of the public in relation to that profession.
- (3) The Society may do anything that is incidental or conducive to the exercise of these functions or the attainment of those objects.
- (4) Schedule 1 shall have effect in relation to the Society.

#### **2 Membership of Society**

- (1) Every solicitor having in force a practising certificate shall be a member of the Society.

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- (2) Notwithstanding any other provisions of this Act, the Council may admit as a member of the Society any solicitor not having in force a practising certificate on such terms and conditions (including the payment by him of a reduced annual subscription) as they may determine.
- (3) Subject to subsection (2), a solicitor shall—
- (a) be treated as if he were not a member of the Society while suspended from practice as a solicitor under any enactment;
  - (b) cease to be a member of the Society when his practising certificate ceases to have effect.

*The Council of the Law Society*

**3 Establishment and functions of Council of Law Society**

- (1) The business of the Society shall continue to be conducted by the Council of the Society (referred to in this Act as " the Council ") the members of which shall be elected in accordance with the provisions of the scheme made under paragraph 2 of Schedule 1.
- (2) The Council shall have the functions conferred upon them by this Act.

**PART II**

RIGHT TO PRACTISE AS A SOLICITOR

*Qualifications and Training*

**4 Qualifications for practising as solicitor**

- No person shall be qualified to practise as a solicitor unless—
- (a) he has been admitted as a solicitor; and
  - (b) his name is on the roll; and
  - (c) subject to section 24, he has in force a certificate issued by the Council in accordance with the provisions of this Part authorising him to practise as a solicitor (referred to in this Act as a "practising certificate ").

**5 Training regulations**

- (1) The Council may, with the concurrence of the Lord President, make regulations for—
- (a) practical training;
  - (b) attendance at a course of legal education ;
  - (c) the passing of examinations.
- (2) Regulations under this section—
- (a) may make such incidental, consequential and supplemental provisions as the Council consider necessary or proper in relation to the matters specified in subsection (1);

- (b) may include provision for the charging by the Council of fees and the application thereof ; and
- (c) may make different provision for different circumstances.

### *Admission*

## **6 Admission as solicitor**

- (1) Subject to the provisions of this section, no person shall be admitted as a solicitor in Scotland unless—
  - (a) he is aged 21 years or over ; and
  - (b) he has satisfied the Council by affidavit or otherwise—
    - (i) that he has complied with the provisions of any regulations made under section 5 that apply to him, and
    - (ii) that he is a fit and proper person to be a solicitor, and has obtained from the Council a certificate to that effect; and
  - (c) he has paid such sum in respect of his admission as has been fixed by the Council with the approval of the Lord President.
- (2) If any person who has complied with the requirements of subsection (1) applies by petition to the Court for admission as a solicitor and produces the certificate mentioned in paragraph (b) of that subsection, the Court shall make an order admitting him as a solicitor.
- (3) If any person has not obtained from the Council a certificate to the effect mentioned in paragraph (b) of subsection (1) but has otherwise satisfied the requirements of that subsection the Court, on such an application being made by him and on being satisfied after such inquiry as it thinks fit, that—
  - (a) he is a fit and proper person to be admitted as a solicitor, and
  - (b) he is competent to be a solicitor,may make an order admitting him as a solicitor.
- (4) Any order admitting a person as a solicitor under this section shall include a direction to the Council to enter the name of that person in the roll.
- (5) Nothing in this section affects the operation of the Colonial Solicitors Act 1900 or any Order in Council made under that Act (admission as solicitors in Scotland of solicitors of certain overseas territories).
- (6) Every person who has been enrolled as a law agent shall be deemed to be admitted as a solicitor.

### *The Roll*

## **7 Keeping the roll**

- (1) The Council shall continue to be the registrar of solicitors and shall keep at the office of their secretary a roll of solicitors (in this Act referred to as " the roll ").
- (2) The roll shall consist of the names in alphabetical order of all solicitors entered on it in accordance with section 8.

- (3) Any person may inspect the roll during office hours without payment.

## **8 Entry in roll**

- (1) On production to the Council of an order under section 6 admitting a person as a solicitor and directing that his name be entered on the roll the Council shall enter the name of that person on the roll.
- (2) Any solicitor whose name is entered on the roll (in this Act referred to as "an enrolled solicitor") shall, on such enrolment, inform the Council in writing of the address of his place of business, and shall on any change of that address, inform them in writing of his new address.
- (3) The Council shall issue a certificate of enrolment to any enrolled solicitor who applies for it.

## **9 Removal of name from roll on request**

—An enrolled solicitor who wishes his name to be removed from the roll of solicitors may make an application to the Council in that behalf, and the Council shall—

- (a) in any case where the application is made with the consent of the Tribunal;
- (b) in any other case, on the solicitor satisfying the Tribunal that he has made adequate arrangements with respect to the business he has then in hand, remove the name of that solicitor from the roll.

## **10 Restoration of name to roll on request**

- (1) A solicitor whose name has been removed from the roll under section 9 or whose name has been struck off the roll other than by order of the Court, shall only be entitled to have his name restored to the roll, if on an application in that behalf made by him to the Tribunal and after such inquiry as the Tribunal thinks proper, the Tribunal so orders.
- (2) Rules made by the Tribunal under section 52 may—
- (a) regulate the making, hearing and determining of applications under subsection (1);
- (b) provide for payment by the applicant to the Council of such fee in respect of restoration to the roll as the rules may specify.

## **11 Directions by Lord President**

- (1) The Lord President may give directions to the Council in relation to the carrying out of their duties in connection with the keeping of the roll and they shall give effect to any such direction.
- (2) Schedule 2 shall have effect in relation to any such directions.

## **12 Power of Court to prescribe fees**

- (1) Fees payable to the Council in respect of matters arising in connection with the keeping of the roll may be prescribed by rules of court.

- (2) Fees payable under subsection (1) include an annual fee payable by enrolled solicitors in respect of the cost of keeping the roll.

### *Practising Certificates*

#### **13 Applications for practising certificates**

- (1) Subject to this section and sections 14 to 24, the Council may make rules with respect to—
- (a) applications for practising certificates;
  - (b) the issue of practising certificates ;
  - (c) the keeping of a register of applications for and the issue of practising certificates.
- (2) Any person may inspect the register during office hours without payment.
- (3) The making of a false statement by a solicitor in an application for a practising certificate may be treated as professional misconduct by him for the purposes of Part IV, unless he proves the statement was made without intention to deceive.

#### **14 Issue of practising certificate**

- (1) The Council shall issue to an enrolled solicitor on application being duly made by him, a practising certificate in accordance with rules made by them under section 13.
- (2) The Council shall not issue a practising certificate to a solicitor while he is suspended from practice.

#### **15 Discretion of Council in special cases**

- (1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a practising certificate, notice of his intention to do so; and the Council may in their discretion—
- (a) grant or refuse the application, or
  - (b) decide to issue a certificate to the applicant subject to such conditions as the Council may think fit.
- (2) Subject to subsections (3) and (4), this section shall have effect in any case where a solicitor applies for a practising certificate—
- (a) still having to serve a post qualifying obligatory year of practical training in terms of an undertaking by him to that effect in his indenture of apprenticeship; or
  - (b) not having held a practising certificate in force within the period of 12 months following the date of his admission; or
  - (c) when a period of 12 months or more has elapsed since he held a practising certificate in force ; or
  - (d) without having paid in full any fine imposed on him under Part IV; or
  - (e) without having paid in full any expenses for which he has been found liable under section 38 or Part IV; or

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- (f) when, having been suspended from practice, the period of suspension has expired ; or
  - (g) when, having had his name struck off the roll, his name has been restored to the roll; or
  - (h) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or
  - (i) when, after a complaint has been made—
    - (i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply which would enable the Council to dispose of the matter ; or
    - (ii) of delay in the disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so,
 and in either case has been notified in writing by the Council accordingly.
- (3) Where a practising certificate free of conditions is issued by the Council under subsection (1) to a solicitor in relation to whom this section has effect by reason of any such circumstances as are mentioned in paragraphs (b), (c), (f), (g) or (h) of subsection (2), this section shall not thereafter have effect in relation to that solicitor by reason of those circumstances.
- (4) Where the Council decide to issue a practising certificate subject to conditions, they may, if they think fit, postpone the issue of the certificate pending the hearing and determination of an appeal under section 16.

## **16 Appeals from decisions of Council**

- (1) Where an application for a practising certificate is duly made to the Council otherwise than in a case where section 15 has effect and the Council refuse or neglect to issue a practising certificate, the applicant may apply to the Court, who may make such order in the matter as it thinks fit.
- (2) Where the Council in exercise of the power conferred on them by section 15, refuse to issue a practising certificate, or issue a practising certificate subject to conditions, the applicant may appeal to the Court against that decision within 14 days of being notified of it.
- (3) On an appeal to the Court under subsection (2) the Court may—
- (a) affirm the decision of the Council; or
  - (b) direct the Council to issue a practising certificate to the applicant subject to such conditions if any as the Court may think fit; or
  - (c) make such other order as it thinks fit.

## **17 Date and expiry of practising certificates**

- (1) Every practising certificate issued in November of any year shall bear the date of 1st November in that year, and every other practising certificate shall bear the date of the day on which it was issued.
- (2) Every practising certificate shall have effect from the date it bears under subsection (1).

- (3) Subject to subsection (4), every practising certificate shall expire on 31st October next after it is issued.
- (4) On the name of any solicitor being struck off the roll or on a solicitor being suspended from practice as a solicitor, any practising certificate for the time being in force of that solicitor shall cease to have effect, but in the case of suspension, if he ceases to be so suspended during the period for which the practising certificate would otherwise have continued in force, the certificate shall thereupon again have effect.

## **18 Suspension of practising certificates**

- (1) If—
  - (a) in pursuance of the Mental Health (Scotland) Act 1960, a solicitor is, by reason of mental disorder, admitted to a hospital and becomes liable to be detained there or becomes subject to guardianship;
  - (b) a *curator bonis* is appointed on the estate of a solicitor;
  - (c) the estate of the solicitor is sequestrated ;
  - (d) a solicitor grants a trust deed for behoof of creditors;
  - (e) a judicial factor is appointed on the estate of the solicitor under section 41;any practising certificate for the time being in force of that solicitor shall cease to have effect, and he shall be suspended from practice as a solicitor.
- (2) On the occurrence of any of the circumstances mentioned in paragraphs (c), (d) or (e) of subsection (1), the solicitor in question shall intimate those circumstances to the Council in writing immediately.
- (3) On the occurrence of the circumstances mentioned in paragraphs (d) or (e) of subsection (1) the trustee or as the case may be the judicial factor shall intimate his appointment to the Council in writing immediately.

## **19 Further provisions relating to suspension of practising certificates**

- (1) The provisions of this section have effect in relation to a practising certificate which has ceased to have effect by virtue of section 18 during the period when that certificate would, but for that section, have continued in force.
- (2) A practising certificate which has ceased to have effect by virtue of paragraph (a) of section 18(1) shall again have effect on the solicitor ceasing to be liable to be detained or subject to guardianship.
- (3) A practising certificate which has ceased to have effect by virtue of paragraph (b) of section 18(1) shall again have effect on the *curator bonis* being discharged.
- (4) A practising certificate which has ceased to have effect by virtue of paragraphs (c) or (d) of section 18(1) shall again have effect on the solicitor being granted his discharge.
- (5) A practising certificate which has ceased to have effect by virtue of paragraph (e) of section 18(1) shall again have effect on the judicial factor being granted his discharge.
- (6) Where a solicitor is suspended from practice as a solicitor by virtue of paragraphs (c), (d) or (e) of section 18(1), he may at any time apply to the Council to terminate the suspension.

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- (7) On an application under subsection (6), the Council may either—
  - (a) grant the application with or without conditions; or
  - (b) refuse the application
- (8) If on an application by a solicitor under subsection (6), the Council refuse the application or grant it subject to conditions, the solicitor may appeal against the decision to the Court, who may—
  - (a) affirm the decision ; or
  - (b) vary any conditions imposed by the Council; or
  - (c) terminate the suspension either with or without conditions.

## **20 Council's duty to supply lists of solicitors holding practising certificates**

- (1) The Council shall send a list of all solicitors holding practising certificates for the practice year then current—
  - (a) to the Keeper of the Registers of Scotland; and
  - (b) to each sheriff clerk ;as soon as practicable after 1st December in each year.
- (2) The Council shall send a list of all such solicitors carrying on business in Edinburgh to the Principal Clerk of Session as soon as practicable after 1st December in each year.
- (3) The Council shall notify those persons to whom they have sent lists under this section of any changes in those lists.

## **21 Consultants to hold practising certificates**

- (1) A consultant shall be treated for the purposes of this Act as a practising solicitor and the provisions relating to practising certificates and, subject to subsection (2), the Guarantee Fund shall apply to him.
- (2) The Council may if they think fit exempt a consultant from any of the provisions of section 43 or Schedule 3 (the Guarantee Fund).
- (3) In this section " consultant" means any solicitor who not being in partnership with a solicitor or other solicitors causes or permits his name to be associated with the name of that solicitor or those solicitors or their firm's name, whether he is described as a consultant or adviser or in any other way.

## **22 Evidence as to holding of practising certificates**

- (1) Any list purporting to be issued by the Council and to contain the names of solicitors in Scotland who have before 1st December in any year obtained practising certificates for the period of 12 months from 1st November in that year shall, until the contrary is proved, be evidence that the persons named in that list are solicitors holding such certificates.
- (2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as a solicitor under a certificate for the current year, but in the case of any such person an extract from the roll certified as correct by the Council shall be evidence of the facts appearing in the extract.



### **23 Offence to practise without practising certificate**

- (1) Any person who practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence under this Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.
- (2) Without prejudice to any proceedings under subsection (1), failure on the part of a solicitor in practice to have in force a practising certificate may be treated as professional misconduct for the purposes of Part IV.

### **24 Saving for public officials**

Nothing in this Act shall require a practising certificate to be taken out by a person who is by law authorised to act as a solicitor to a public department without admission, or by any assistant or officer appointed to act under the direction of any such solicitor.

#### *Rights of Solicitors*

### **25 Rights of practising**

Every person qualified to practise as a solicitor in accordance with section 4 may practise as a solicitor in any court in Scotland.

#### *Restriction on rights of practising*

### **26 Offence for solicitors to act as agents for unqualified persons**

- (1) Any solicitor to whom this subsection applies who upon the account or for the profit of any unqualified person—
  - (a) acts as agent in any action or proceedings in any court, or
  - (b) permits or suffers his name to be made use of in any way in any such action or proceedings ; or
  - (c) draws or prepares any writ to which section 32 applies, or
  - (d) permits or suffers his name to be made use of in the drawing or preparing of any such writ; or
  - (e) does any other act to enable that person to appear, act or practise in any respect as a solicitor or notary public,knowing that person not to be a qualified solicitor or notary public, as the case may be, shall be guilty of an offence.
- (2) Subsection (1) applies to any solicitor, not being a solicitor who is employed full-time on a fixed salary by a body corporate.
- (3) In this section " person " includes a body corporate.

### **27 Offence for solicitors to share fees with unqualified persons**

- (1) Subject to subsection (2) any solicitor who shares with an unqualified person any profits or fees derived from any solicitor's business transacted by him shall be guilty of an offence.

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- (2) Subsection (1) does not apply to a solicitor sharing the profits or fees derived from such a business with—
- (a) a person who has ceased to practise as a solicitor if such share—
    - (i) is in respect of the price or value of the business transferred by that person to him; or
    - (ii) is a voluntary or other allowance made to that person as a former partner in the business; or
  - (b) the widow, heirs, executors, representatives, next of kin, or dependents of any deceased solicitor who was a partner in the business at the date of his death, or whose business he has purchased or succeeded to; or
  - (c) any clerk or assistant who is wholly employed by him if such share is a salary partly or wholly paid on the basis of a percentage of those profits; or
  - (d) any public officer if such share is in respect of work done in the course of his duty; or
  - (e) a person qualified to act as a solicitor in some part of the United Kingdom other than Scotland or in any British possession if such share is paid in accordance with an agreement between them for sharing fees.
- (3) In paragraph (e) of subsection (2), " British possession " means any part of Her Majesty's dominions outside the United Kingdom as at 1st March 1934.

**28 Offence for solicitors who are disqualified to seek employment without informing employer**

—Any person who—

- (a) has been struck off the roll; or
- (b) suspended from practice as a solicitor,

and while so disqualified from practice seeks or accepts employment by a solicitor in connection with that solicitors practice without previously informing him that he is so disqualified, shall be guilty of an offence.

**29 Restriction on borrowing processes**

- (1) A solicitor shall not be entitled to borrow the process in any proceedings depending before the Court unless he has a place of business in Edinburgh.
- (2) A solicitor shall not be entitled to borrow the process in any proceedings depending before an inferior court unless he has a place of business within the jurisdiction of that court.

**30 Liability for fees of other solicitor**

Where a solicitor, authorised by and acting for a client employs another solicitor he shall (whether or not he discloses the client) be liable to the other solicitor for that other solicitor's fees and outlays, unless at the time of the employment he expressly disclaims any such liability.

*Unqualified persons acting as solicitors*

**31 Offence for unqualified person to pretend to be solicitor**

Any unqualified person (including a body corporate) who either by himself or together with others, wilfully and falsely—

- (a) pretends to be a solicitor or notary public ; or
- (b) takes or uses any name, title, addition or description implying that he is duly qualified to act as a solicitor or a notary public or recognised by law as so qualified ;

shall be guilty of an offence.

**32 Offence for unqualified person to prepare certain documents**

(1) Subject to the provisions of this section, any unqualified person (including a body corporate) who draws or prepares—

- (a) any writ relating to heritable or moveable estate; or
- (b) any writ relating to any legal proceedings; or
- (c) any papers on which to found or oppose an application for a grant of confirmation in favour of executors,

shall be guilty of an offence.

(2) Subsection (1) shall not apply—

- (a) to an unqualified person if he proves that he drew or prepared the writ or papers in question without receiving, or without expecting to receive, either directly or indirectly, any fee, gain or reward ; or
- (b) to an advocate; or
- (c) to any public officer drawing or preparing writs in the course of his duty ; or
- (d) to any person employed merely to engross any writ.

(3) In this section " writ " does not include—

- (a) a will or other testamentary writing;
- (b) a document in *re mercatoria*, missive or mandate;
- (c) a letter or power of attorney;
- (d) a transfer of stock containing no trust or limitation thereof.

**33 Unqualified persons not entitled to fees, etc.**

No fee, reward, outlay or expenses on account of or in relation to any act or proceeding done or taken by any person who—

- (a) acts as a solicitor or as a notary public without being duly qualified so to act; or
- (b) not being so qualified, gives legal advice or frames or draws any writs to which section 32 applies,

shall be recoverable by any person in any action or matter.

## PART III

### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

#### *Practice rules*

#### **34 Rules as to professional practice, conduct and discipline**

- (1) Subject to subsections (2) and (3), the Council may, if they think fit, make rules for regulating in respect of any matter the professional practice, conduct and discipline of solicitors.
- (2) The Council shall, before making any rules under this section or section 35—
  - (a) send to each member of the Society a draft of the rules; and
  - (b) thereafter submit the draft rules to a meeting of the Society; and
  - (c) take into consideration any resolution passed at that meeting relating to amendments to the draft rules.
- (3) Rules made under this section or section 35 shall not have effect unless the Lord President after considering any objections he thinks relevant has approved the rules so made.
- (4) If any solicitor fails to comply with any rule made under this section that failure may be treated as professional misconduct for the purposes of Part IV.

#### *Accounts rules*

#### **35 Accounts rules**

- (1) The Council shall, subject to section 34(2) and (3), make rules (in this Act referred to as "accounts rules")—
  - (a) as to the opening and keeping by solicitors of accounts and deposits at the banks specified in subsection (2) for moneys not belonging to them received by them in the course of their practice ;
  - (b) as to the opening and keeping by solicitors of—
    - (i) a deposit or share account with a building society designated under section 1 of the House Purchase and Housing Act 1959, or
    - (ii) an account showing sums on loan to a local authority,being in either case for a client whose name is specified in the title of the account;
  - (c) as to the keeping by solicitors of books and accounts containing particulars and information as to money not belonging to them received, held or paid by them in the course of their practice; and
  - (d) as to the action which the Council may take to enable them to ascertain whether or not the rules are being complied with.
- (2) The banks mentioned in paragraph (a) of subsection (1) are—
  - (a) the Bank of England ;
  - (b) a Trustee Savings Bank within the meaning of section 95 of the Trustee Savings Bank Act 1969;
  - (c) the National Savings Bank;

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- (d) the Post Office, in the exercise of its powers to provide banking services;
  - (e) a recognised bank within the meaning of the Banking Act 1979; and
  - (f) any other company as to which immediately before the repeal of the Protection of Depositors Act 1963 the Secretary of State was satisfied that it ought to be treated as a banking company for the purposes of that Act,
- and the rules may specify the location of the banks' or companies' branches at which the accounts are to be kept.
- (3) If any solicitor fails to comply with any rule made under this section that failure may be treated as professional misconduct for the purposes of Part IV.
- (4) Rules made under this section shall not apply to a solicitor—
- (a) who is in employment as solicitor to a Minister of the Crown or a Government Department or as an assistant or officer appointed to act under the direction of such solicitor; or
  - (b) who is in employment to which Part II of the Legal Advice and Assistance Act 1972 applies; or
  - (c) who is in employment in an office connected with the administration of a local authority or a statutory undertaking or a designated body to which he has been appointed by the authority or the statutory undertakers or the persons responsible for the management of that body by reason of his being a solicitor,
- so far as regards monies' received, held or paid by him in the course of that employment. In this subsection—
- " local authority " means a local authority within the meaning of the Local Government (Scotland) Act 1973 ;
  - "statutory undertakers" means any persons (including a local authority) authorised by any enactment or statutory order or any scheme made under or confirmed by an enactment to construct, work or carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of gas, electricity, hydraulic power or water ;
  - " designated body " means any body whether corporate or unincorporate for the time being designated by the Council for the purposes of this section.

### **36 Interest on client's money**

- (1) Accounts rules shall make provision for requiring a solicitor, in such cases as may be prescribed by the rules, either—
- (a) to keep in a separate deposit or savings account at a bank, or on a separate deposit receipt at a bank, for the benefit of the client money received for or on account of a client; or
  - (b) to make good to the client out of the solicitor's own money a sum equivalent to the interest which would have accrued if the money so received had been kept as mentioned in paragraph (a).
- (2) The cases in which a solicitor may be required to act as mentioned in subsection (1) may be defined among other things by reference to the amount of any sum received or balance held or the period for which it is or is likely to be retained or held or both; and the rules may include provision for enabling a client (without prejudice to any other remedy) to require that any question arising under the rules in relation to the client's money be referred to and determined by the Society.

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- (3) Except as provided by the rules, a solicitor shall not be liable by virtue of the relation between solicitor and client to account to any client for interest received by the solicitor on monies lodged in an account, or on deposit receipt, at a bank, being monies received or held for or on account of his clients generally.
- (4) Nothing in this section or in the rules shall affect any arrangement in writing whenever made between a solicitor and his client as to the application of the client's money or interest on it.

### **37 Accountants' certificates**

- (1) This section shall have effect for the purpose of securing satisfactory evidence of compliance with the accounts rules.
- (2) Subject to the following provisions of this section, every solicitor to whom the accounts rules apply shall, in accordance with the rules made under subsection (3), deliver to the Council a certificate by an accountant (in this section referred to as an "accountant's certificate").
- (3) The Council shall make rules (in this Act referred to as "accountant's certificate rules") prescribing—
  - (a) the qualifications to be held by an accountant by whom an accountant's certificate may be given;
  - (b) the nature and extent of the examination to be made by an accountant of the books and accounts of a solicitor or his firm and of any other relative documents with a view to the signing of an accountant's certificate;
  - (c) the intervals at which an accountant's certificate shall be delivered to the Council, not being more frequent than once in each practice year;
  - (d) the accounting period for which an accountant's certificate shall be delivered or the different accounting periods for which in different circumstances an accountant's certificate shall be delivered ;
  - (e) the period within which an accountant's certificate shall be delivered; and
  - (f) the form and content of an accountant's certificate.
- (4) The accountant's certificate rules may include such other provisions as the Council consider necessary or proper for the purpose of giving effect to the foregoing provisions of this section and for regulating any incidental, consequential or supplementary matters.
- (5) The delivery of an accountant's certificate in pursuance of subsection (2) shall not be required in the case of —
  - (a) a solicitor who, in agreement with the Council, furnishes to the Council and keeps in force a fidelity bond by an insurance office or other institution accepted by the Court as cautioners for a judicial factor appointed by the Court for such amount as the Council may determine, guaranteeing the intromissions of the solicitor or his firm with money held by him or them for or on behalf of clients; or
  - (b) a solicitor who satisfies the Council that during the accounting period to which the accountant's certificate would ordinarily relate he has not in the course of his practice held or received any money on behalf of clients.

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*Status: This is the original version (as it was originally enacted).*

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- (6) If the Council are of opinion that satisfactory evidence of compliance with the accounts rules for the time being in force will be secured by some method other than by delivery of an accountant's certificate under subsection (2), they may make rules—
- (a) prescribing—
    - (i) that other method ;
    - (ii) the terms and conditions to be observed in connection therewith; and
    - (iii) the procedure to be followed by solicitors desiring to adopt that other method, and
  - (b) containing such incidental, consequential and supplementary provisions relative thereto as the Council may consider necessary or proper ;
- and a solicitor who satisfies the Council that he is complying with rules made under this subsection shall not be required to deliver an accountant's certificate in pursuance of subsection (2).
- (7) A certificate under the hand of the secretary of the Society certifying that a specified solicitor has or has not, as the case may be, delivered to the Council an accountant's certificate, or supplied any evidence required from him under this section or under the accountant's certificate rules or, as the case may be, under any rules made under subsection (6), shall, unless the contrary is proved, be evidence of the fact so certified.
- (8) Failure by a solicitor to comply with any provision of this section or of the accountant's certificate rules or of any rules made under subsection (6), so far as applicable to him, may be treated as professional misconduct for the purposes of Part IV.

#### *Powers of Council to intervene*

### **38 Powers where dishonesty alleged**

- (1) If the Council have reasonable cause to believe that a solicitor or an employee of his has been guilty of any such dishonesty as is mentioned in section 43(2) they may—
- (a) require the production or delivery to any person appointed by the Council at a time and place fixed by the Council of the documents to which this section applies;
  - (b) take possession of all such documents; and
  - (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of such solicitor or his firm without the leave of the Court and the Court may make such order.
- (2) This section applies to the following documents—
- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of such solicitor or his firm;
  - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which he is a sole trustee or is a co-trustee only with one or more of his partners or employees.
- (3) Part II of Schedule 3 shall have effect in relation to the powers of the Council under this section.

### **39 Powers where delay alleged**

- (1) If—
- (a) a complaint is made to the Society that there has been undue delay on the part of a solicitor in dealing with any matter in which he or his firm is or has been concerned in a professional capacity, or any matter relating to a trust of which he is or was the sole trustee, or a co-trustee only with one or more of his partners or employees, and
  - (b) the Council are of opinion that the delay ought to be investigated,
- the Council may by notice in writing at any time, and from time to time, require the solicitor to give an explanation of the delay.
- (2) Any notice given by the Council under subsection (1) may specify a period, not being less than 21 days, within which they require an explanation to be furnished; and if within that period the solicitor does not reply or fails to furnish an explanation which the Council regard as sufficient and satisfactory, and he is so informed in writing, section 38 shall apply in relation to that solicitor and his firm in so far as it relates to documents or payments connected with the matter complained of (but not otherwise) and shall so apply notwithstanding that the Council may not have reasonable cause to believe that the solicitor has been guilty of any such dishonesty as is mentioned in section 43(2).

### **40 Powers where failure to comply with accounts rules etc.**

- (1) Where the Council are satisfied, in the case of any solicitor, after enquiry and after giving the solicitor an opportunity of being heard, that the solicitor is failing to comply with any provisions of—
- (a) section 35 or the accounts rules made under that section, or
  - (b) section 37 or the accountant's certificate rules or other rules made under that section,
- so far as applicable in his case (in this section referred to as " the applicable provisions "), the Council may, subject to the provisions of this section, withdraw the practising certificate held by the solicitor, and the certificate shall thereupon cease to have effect and the solicitor shall be suspended from practice as a solicitor.
- (2) On being satisfied by the solicitor that he is able and willing to comply with the applicable provisions, the Council, unless they are of opinion that the solicitor is liable to disciplinary proceedings under Part IV, shall terminate the suspension from practice of the solicitor and shall restore to him any practising certificate held by him for the practice year then current.
- (3) Within 21 days after receiving written notice of a decision of the Council under this section to withdraw his practising certificate, or to refuse to terminate his suspension from practice, the solicitor may appeal to the Court against the decision; and on any such appeal the Court may give such directions in the matter, including directions as to the expenses of the proceedings before the Court, as it may think fit; and the order of the Court shall be final.
- (4) Any withdrawal of a solicitor's practising certificate by the Council in exercise of the power conferred by subsection (1) shall be without prejudice to the operation of section 35(3) or or section 37(8).



#### **41 Appointment of judicial factor**

Where the Council, in exercise of any power conferred on them by the accounts rules, have caused an investigation to be made of the books, accounts and other documents of a solicitor, and, on consideration of the report of the investigation, the Council are satisfied—

- (a) that the solicitor has failed to a material extent to comply with the provisions of those rules, and
- (b) that, in connection with his practice as a solicitor, either—
  - (i) his liabilities exceed his assets in the business, or
  - (ii) his books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether his liabilities exceed his assets, or
  - (iii) there is reasonable ground for apprehending that a claim on the Guarantee Fund may arise,

the Council may apply to the Court for the appointment of a judicial factor on the estate of the solicitor; and the Court, on consideration of the said report and after giving the solicitor an opportunity of being heard, may appoint a judicial factor on the solicitor's estate, or do otherwise as seems proper to it.

#### **42 Distribution of sums in client bank account**

- (1) Subject to the provisions of this section, where, in any of the events mentioned in subsection (2), the sum at the credit of any client account kept by a solicitor (or where several such accounts are kept by him the total of the sums at the credit of those accounts) is less than the total of the sums received by him in the course of his practice on behalf of his clients and remaining due by him to them, then, notwithstanding any rule of law to the contrary, the sum at the credit of the client account (or where several such accounts are kept, the total of the sums at the credit of those accounts) shall be divisible proportionately among the clients of the solicitor according to the respective sums received by him in the course of his practice on their behalf and remaining due by him to them.
- (2) The events to which subsection (1) applies are in relation to any solicitor—
  - (a) the sequestration of his estate;
  - (b) the granting by him of a trust deed for behoof of creditors ;
  - (c) the appointment of a judicial factor on his estate.
- (3) Where a solicitor keeps an account at a bank in his own name for a specified client no regard shall be had for the purposes of this section to the sum at the credit of that account or to any sums received by the solicitor in the course of his practice on behalf of that client and remaining due by him to that client, so far as these are represented by the sum at the credit of that bank account.
- (4) For the purposes of this section any reference to an account at a bank includes a reference to a deposit receipt at a bank.

*Protection of clients*

**43 Guarantee Fund**

- (1) There shall be a fund to be called " The Scottish Solicitors Guarantee Fund " (in this Act referred to as " the Guarantee Fund "), which shall be vested in the Society and shall be under the control and management of the Council.
- (2) Subject to the provisions of this section and of Schedule 3 the Guarantee Fund shall be held by the Society for the purpose of making grants in order to compensate persons who in the opinion of the Council suffer pecuniary loss by reason of dishonesty on the part of any solicitor in practice in the United Kingdom, or any employee of such a solicitor in connection with the practice of the solicitor, whether or not he had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the roll or may have ceased to practise or been suspended from practice.
- (3) No grant may be made under this section—
  - (a) in respect of a loss made good otherwise;
  - (b) in respect of a loss which in the opinion of the Council has arisen while the solicitor was suspended from practice;
  - (c) to a solicitor or his representatives in respect of a loss suffered by him or them in connection with his practice as a solicitor by reason of dishonesty on the part of a partner or employee of his; or
  - (d) unless an application for a grant is made to the Society in such manner, and within such period after the date on which the loss first came to the knowledge of the applicant, as may be prescribed by rules made under Schedule 3.
- (4) The decision of the Council with respect to any application for a grant shall be final.
- (5) The Council may refuse to make a grant, or may make a grant only to a limited extent, if they are of opinion that there has been negligence on the part of the applicant or of any person for whom he is responsible which has contributed to the loss in question.
- (6) The Council or any committee appointed by them may administer oaths for the purpose of inquiry into any matters which affect the making or refusal of a grant from the Guarantee Fund.
- (7) Part I of Schedule 3 shall have effect with respect to the Guarantee Fund, including the making of contributions thereto by solicitors and the administration and management of the Fund by the Council; but nothing in that Schedule shall apply to or in the case of a solicitor—
  - (a) who is not in practice as a solicitor; or
  - (b) who is suspended from practice as a solicitor during suspension, or
  - (c) who is in any such employment as is specified in section 35(4);but where any solicitor in any such employment as is mentioned in paragraph (c) engages in private practice as a solicitor, the said Schedule and the other provisions of this Act relating to the Guarantee Fund shall apply to him and in his case so far as regards such private practice.

#### **44 Professional indemnity**

- (1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors against any class of professional liability, and the rules may for the purpose of providing such indemnity do all or any of the following things, namely—
  - (a) authorise or require the Society to establish and maintain a fund or funds;
  - (b) authorise or require the Society to take out and main-lain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business;
  - (c) require solicitors or any specified class of solicitors to take out and maintain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business.
- (2) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of the rules.
- (3) Without prejudice to the generality of subsections (1) and (2) rules made under this section—
  - (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
  - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (1)(a) and require solicitors or any class of solicitors to make payments to any such fund ;
  - (c) may require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (1)(b);
  - (d) may prescribe the conditions which an insurance policy must satisfy for the purpose of subsection (1)(c);
  - (e) may authorise the Society to determine the amount of any payments required by the rules subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
  - (f) may specify circumstances in which, where a solicitor for whom indemnity is provided has failed to comply with the rules, proceedings in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply may be taken against him by the Society or by insurers;
  - (g) may specify circumstances in which solicitors are exempt from the rules;
  - (h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
  - (f) may contain incidental, procedural or supplementary provisions.
- (4) Failure to comply with rules made under this section may be treated as professional misconduct for the purposes of Part IV, and any person may make a complaint in respect of that failure to the Discipline Tribunal.
- (5) In this section "professional liability" means any civil liability incurred by a solicitor or former solicitor in connection with his practice or in connection with any trust of which he is or formerly was a trustee.

#### **45 Safeguarding interests of clients of solicitors struck off or suspended**

- (1) The following provisions of this section shall have effect in relation to the practice of a solicitor whose name is struck off the roll or who is suspended from practice as a solicitor under any provision of this Act.
- (2) The solicitor shall within 21 days of the material date satisfy the Council that he has made suitable arrangements for making available to his clients or to some other solicitor or solicitors instructed by his clients or by himself—
  - (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is sole trustee or co-trustee only with one or more of his partners or employees, and
  - (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid.
- (3) if the solicitor fails so to satisfy the Council the provisions of section 38 shall apply in relation to that solicitor, notwithstanding that the Council may not have reasonable cause to believe that he has been guilty of any such dishonesty as is mentioned in section 43(2).
- (4) If the solicitor, immediately before the striking off or, as the case may be, the suspension, was a sole solicitor, the right to operate on, or otherwise deal with, any client account in the name of the solicitor or his firm shall on the occurrence of that event vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person.
- (5) In this section—

" material date " means whichever is the latest of—

  - (a) the date when the order of the Tribunal or Court by or in pursuance of which the solicitor is struck off the roll or suspended from practice is to take effect;
  - (b) the last date on which—
    - (i) an appeal against that order may be lodged or an application may be made to the Court under section 54(2), or
    - (ii) an appeal against a decision of the Council under section 40 may be lodged ;
  - (c) the date on which any such appeal is dismissed or abandoned; and

" sole solicitor " means a solicitor practising under his own name or as a single solicitor under a firm name.

#### **46 Safeguarding interests of clients in other cases**

- (1) Where the Council are satisfied that a sole solicitor is incapacitated by illness or accident to such an extent as to be unable to operate on, or otherwise deal with, any client account in the name of the solicitor or his firm, and that no other arrangements acceptable to the Council have been made, the right to operate on, or otherwise deal with, that account shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person so long, but only so long, as the Council are satisfied that such incapacity and absence of other acceptable arrangements continues.

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- (2) Where a sole solicitor ceases to practise for any reason other than that his name has been struck off the roll or that he has been suspended from practice, and the Council are not satisfied that suitable arrangements have been made for making available to his clients or to some other solicitor or solicitors instructed by his clients or on their behalf—
- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is the sole trustee, or a co-trustee only with one or more of his employees, and
  - (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,
- the provisions of section 38 shall apply in relation to that solicitor, notwithstanding that the Council may not have reasonable cause to believe that he has been guilty of any such dishonesty as is mentioned in section 43(2).
- (3) Where a sole solicitor dies—
- (a) the right to operate on or otherwise deal with any client account in the name of the solicitor or his firm shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any personal representatives of the solicitor, and shall be exercisable as from the death of the solicitor ; and
  - (b) if the Council are not satisfied that suitable arrangements have been made for making available to the solicitor's clients or to some other solicitor or solicitors instructed by his clients or on their behalf—
    - (i) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents which were in his or his firm's possession or control which were held on behalf of his clients or which relate to any trust of which he was the sole trustee, or a co-trustee only with one or more of his employees, and
    - (ii) all sums of money which were due from him or his firm or were held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,the provisions of section 38 shall apply in relation to that solicitor notwithstanding that the Council may not have reasonable cause to believe that he had been guilty of any such dishonesty as is mentioned in section 43(2).
- (4) In a case where the Society have operated on or otherwise dealt with a client account by virtue of subsection (3) the Society shall be entitled to recover from the estate of the solicitor who has died such reasonable expenses as the Society have thereby incurred.
- (5) In this section " sole solicitor " has the same meaning as in section 45.

#### **47 Restriction on employing solicitor struck off or suspended**

- (1) Unless he has the written permission of the Council to do so, a solicitor shall not, in connection with his practice as a solicitor, employ or remunerate any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll or that he is suspended from practice as a solicitor.
- (2) Any permission given by the Council for the purposes of subsection (1) may be given for such period and subject to such conditions as the Council think fit.

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- (3) A solicitor aggrieved by the refusal of the Council to grant any such permission as aforesaid, or by any conditions attached by the Council to the grant thereof, may appeal to the Court; and on any such appeal the Court may give such directions in the matter as it thinks fit.
- (4) If any solicitor acts in contravention of this section or of any condition subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice as a solicitor for such period as the Tribunal, or, in the case of an appeal, the Court, may think fit.

#### **48 Restriction on number of apprentices**

- (1) The Council may make rules as to the number of apprentices who may be taken by a solicitor or by a firm of solicitors; but any rules so made shall not come into operation until they have been approved by the Lord President
- (2) A contravention by a solicitor of any rules made under this section may be treated as professional misconduct for the purposes of Part IV.

### **PART IV**

#### **COMPLAINTS AND DISCIPLINARY PROCEEDINGS**

##### *Lay Observer*

#### **49 Investigation by lay observer of Society's treatment of complaints**

- (1) The Secretary of State, if he thinks fit, may, after consultation with the Lord President, appoint a person (in this section referred to as " the lay observer "), not being an advocate or a solicitor, to examine any written allegation made by or on behalf of a member of the public concerning the Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf.
- (2) Schedule 5 shall have effect in relation to the lay observer.

##### *The Scottish Solicitors' Discipline Tribunal*

#### **50 The Tribunal**

- (1) For the purposes of this Part of this Act there shall be a tribunal, which shall be known as the Scottish Solicitors' Discipline Tribunal and is in this Act referred to as "the Tribunal".
- (2) Part I of Schedule 4 shall have effect in relation to the constitution of the Tribunal.

#### **51 Complaints to Tribunal**

- (1) A complaint may be made to the Tribunal by the Council; and, for the purpose of investigating and prosecuting complaints, the Council may appoint a solicitor to act as fiscal.

- (2) The persons mentioned in subsection (3) may report to the Tribunal any case where it appears that a solicitor may have been guilty of professional misconduct (including any case where it appears that a solicitor may have been seeking to make extraordinary and apparently unjustified claims against his client), and any such report shall be treated by the Tribunal as a complaint under subsection (1).
- (3) The persons referred to in subsection (2) are—
- (a) the Lord Advocate;
  - (b) any judge;
  - (c) the Auditor of the Court of Session;
  - (d) the Auditor of any sheriff court.

## **52 Procedure on complaints to Tribunal**

- (1) Part II of Schedule 4, shall have effect in relation to the procedure and powers of the Tribunal in relation to any complaint concerning a solicitor.
- (2) Subject to the other provisions of this Part, and of any rules of court made under this Act, the Tribunal, with the concurrence of the Lord President, may make rules—
- (a) for regulating the making, hearing and determining of complaints made to it under this Act; and
  - (b) generally as to the procedure of the Tribunal (including provision for hearings taking place in public or wholly or partly in private).

## **53 Powers of Tribunal**

- (1) Subject to the other provisions of this Part, the powers exercisable by the Tribunal under subsection (2) shall be exercisable if—
- (a) after holding an inquiry into a complaint against a solicitor the Tribunal is satisfied that he has been guilty of professional misconduct, or
  - (b) a solicitor has (whether before or after enrolment as a solicitor), been convicted by any court of an act involving dishonesty or has been sentenced to a term of imprisonment of not less than 2 years.
- (2) Subject to subsection (1), the Tribunal may—
- (a) order that the name of the solicitor be struck off the roll; or
  - (b) order that the solicitor be suspended from practice as a solicitor for such time as it may determine; or
  - (c) subject to subsection (3), impose on the solicitor a fine not exceeding £250; or
  - (d) censure the solicitor; or
  - (e) impose such fine and censure him.
- (3) The Tribunal shall not impose a fine under subsection (2)(c) in any of the circumstances mentioned in subsection (1)(b).
- (4) Any fine imposed by the Tribunal under subsection (2) shall be forfeit to Her Majesty.
- (5) Where the Tribunal have exercised the power conferred by subsection (2) to censure, or impose a fine on, a solicitor, or both to censure and impose a fine, the Tribunal may order that the solicitor's practising certificate shall be subject to such terms and conditions as the Tribunal may direct; and the Council shall give effect to any such order of the Tribunal.

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- (6) Where the Tribunal orders that the name of a solicitor be struck off the roll, or that the solicitor be suspended from practice as a solicitor, the Tribunal may direct that the order shall take effect on the date on which it is intimated to the solicitor; and if any such direction is given the order shall take effect accordingly.
- (7) Where in relation to any such order as is mentioned in subsection (6) the Tribunal gives a direction under that subsection, and an appeal against the order is taken to the Court under section 54, the order shall continue to have effect pending the determination or abandonment of the appeal unless, on an application under subsection (2) of section 54, the Court otherwise directs.

#### **54 Appeals from decisions of Tribunal**

- (1) Any person aggrieved by a decision of the Tribunal relating to discipline under this Act may within 21 days of the date on which the decision of the Tribunal is intimated to him, appeal against the decision to the Court, and on any such appeal the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses; and the order of the Court shall be final.
- (2) Where the Tribunal has exercised the power conferred by section 53(6) to direct that its decision shall take effect on the date on which it is intimated to the solicitor concerned, the solicitor may, within 21 days of that date, apply to the Court for an order varying or quashing the direction in so far as it relates to the date of taking effect; and on any such application the Court may make the order applied for or such other order with respect to the matter as it thinks fit.

#### *The Court*

#### **55 Powers of Court**

- (1) In the case of professional misconduct by any solicitor the Court may—
  - (a) cause the name of that solicitor to be struck off the roll; or
  - (b) suspend the solicitor from practice as a solicitor for such period as the Court may determine; or
  - (c) fine the solicitor; or
  - (d) censure him; and in any of those events,
  - (e) find him liable in any expenses which may be involved in the proceedings before the Court.
- (2) Subject to subsection (3), a decision of the Court under this section shall be final.
- (3) A solicitor whose name has been struck off the roll in pursuance of an order made by the Court under subsection (1), may apply to the Court for an order directing his name to be restored to the roll and the Court may make such order.
- (4) An application under subsection (3) shall be by way of petition and intimation of any such petition shall be made to the Tribunal who shall be entitled to appear and to be heard in respect of the application.



**56 Saving for jurisdiction of courts**

Except as otherwise expressly provided, nothing in this Part shall affect the jurisdiction exercisable by the Court, or by any inferior court, over solicitors.

**PART V**

NOTARIES PUBLIC

**57 Admission and enrolment of solicitors as notaries public**

- (1) No person shall be admitted as a notary public unless he has been admitted and enrolled as a solicitor.
- (2) Any solicitor may apply to the Court to be admitted as a notary public ; and on any such application the Court may so admit the applicant and may grant warrant to the keeper of the register of notaries public to register him in that register.
- (3) It shall not be necessary for any person to find caution on his admission as a notary public.
- (4) The procedure to be followed and the fees to be paid on any application by a solicitor to be admitted a notary public may be prescribed by rules of court.
- (5) There shall be paid to the clerk to the admission of notaries public in respect of the admission of any person as a notary public such fees as may be prescribed by rules of court.

**58 Removal from and restoration to register of names of notaries public**

- (1) In the case of any person who is both a solicitor and a notary public, if his name is struck off the roll of solicitors or is removed from that roll in pursuance of an order under any provision of this Act, the Council shall forthwith give notice of the striking off or removal to the keeper of the register of notaries public, who shall thereupon strike the person's name off, or, as the case may be, remove it from, that register.
- (2) If the name of any such person, having been struck off or removed from the roll as aforesaid, is subsequently restored thereto in pursuance of an order under any provision of this Act, it shall be the duty of the Council forthwith to notify the said keeper accordingly; and the keeper shall thereupon restore the name to the register of notaries public.

**59 Authority of notaries public to administer oaths, etc.**

- (1) Subject to subsection (2), in any case where the administration of an oath, or the receipt of an affidavit or solemn affirmation, is authorised by or under any enactment, it shall be lawful for the oath to be administered, or, as the case may be, for the affidavit or affirmation to be received, by a notary public.
- (2) Nothing in this section applies to an oath or affirmation relating to any matter or thing relating to the preservation of the peace or to the prosecution, trial or punishment of an offence, or to any proceedings before either House of Parliament or any committee thereof.

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- (3) This section is without prejudice to any other statutory provision relating to the administration of oaths by notaries public.

## **60 Offence for notaries public to act for unqualified persons**

- (1) Any notary public who upon the account or for the profit of any unqualified person—
- (a) draws or prepares any writ to which section 32 applies; or
  - (b) permits or suffers his name to be made use of in the drawing or preparing of any such writ; or
  - (c) does any other act to enable that person to appear, act or practise in any respect as a solicitor or notary public,
- knowing such person not to be a qualified solicitor or notary public, as the case may be, shall be guilty of an offence.
- (2) In this section " person " includes a body corporate.

## **PART VI**

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

## **61 Protection of banks**

- (1) Subject to the provisions of this section, no bank shall, in connection with any transaction on any account of a solicitor kept with it or with any other bank—
- (a) incur any liability, or
  - (b) be under any obligation to make any enquiry, or
  - (c) be deemed to have any knowledge of any right of any person to any money paid or credited to the account,
- which it would not incur, or be under, or be deemed to have (as the case may be) in the case of an account kept by a person entitled absolutely to all money paid or credited to it; but nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.
- (2) In subsection (1) " account " does not include an account kept by a solicitor as trustee for a specified beneficiary.
- (3) Notwithstanding anything in the preceding provisions of this section a bank at which a solicitor keeps a special account for clients' money shall not, in respect of any liability of the solicitor to the bank (not being a liability in connection with that account) have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against money standing to the credit of that account.

## **62 Charge for expenses out of property recovered**

- (1) Where a solicitor has been employed by a client to pursue or defend any action or proceeding, the court before which the action or proceeding has been heard or is depending may declare the solicitor entitled, in respect of the taxed expenses of or in reference to the action or proceeding, to a charge upon, and a right to payment out of,

any property (of whatsoever nature, tenure or kind it may be) which has been recovered or preserved on behalf of the client by the solicitor in the action or proceeding ; and the court may make such order for the taxation of, and for the raising and payment of, those expenses out of the said property as the court thinks just.

- (2) Where a declaration has been made under subsection (1) any act done or deed granted by the client after the date of the declaration except an act or deed in favour of a bona fide purchaser or lender, shall be absolutely void as against the charge or right.

### *General*

#### **63 Penalties and time limit for prosecution of offences**

- (1) Any person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding £100 and to imprisonment for a period not exceeding one month.
- (2) Notwithstanding any provision of the Criminal Procedure (Scotland) Act 1975, the prosecution of any offence under this Act shall be commenced within 6 months of its first discovery by the prosecutor or in any event within 2 years after the commission of that offence.

#### **64 Service of notices etc.**

Any notice or other document which is required or authorised under this Act to be given to, or served on, any person shall be taken to be duly given or served if it is delivered to him or left at, or sent by post to, his last-known place of business or residence.

#### **65 Interpretation**

- (1) In this Act, except in so far as the context otherwise requires—
- " accounts rules " has the meaning given by section 35 ;
  - " accountant's certificate rules " has the meaning given by section 37(3);
  - " advocate " means a member of the Faculty of Advocates;
  - " client account " means a current or deposit or savings account, or a deposit receipt, at a bank, being an account or, as the case may be, a deposit receipt in the title of which the word " client", " trustee", " trust" or other fiduciary term appears, including—
    - (a) an account or deposit receipt for a client whose name is specified in the title of the account on deposit receipt, and
    - (b) an account such as is mentioned in paragraphs (a) and (b) of section 35(1);
  - " the Council " has the meaning given by section 3 ;
  - " the Court " means the Court of Session;
  - " functions " includes powers and duties ;
  - " judge " includes sheriff ;
  - " lay observer " has the meaning given by section 49 ;
  - " Lord President " means the Lord President of the Court of Session;
  - " notary public " means a notary public duly admitted in Scotland;
  - " practice year " means the year ending on 31st October ;

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- " practising certificate " has the meaning given by section 4 ;
- " property " includes property, whether heritable or moveable, and rights and interests in, to or over such property;
- " the roll " has the meaning given by section 7 ;
- " the Society " has the meaning given by section 1;
- " solicitor " means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of this Act;
- " the Tribunal " has the meaning given by section 50 ;
- " unqualified person " means a person who is not qualified under section 4 to act as a solicitor.

- (2) Unless the context otherwise requires a reference—
  - (a) in any enactment to law agents includes solicitors ;
  - (b) in any enactment to the register of law agents kept in pursuance of the Law Agents (Scotland) Act 1873 includes the roll;
  - (c) in any enactment or instrument to the Solicitors Discipline (Scotland) Committee shall be construed as a reference to the Tribunal;
  - (d) in any enactment or instrument or other document to the General Council of Solicitors in Scotland shall be construed as a reference to the Council;
  - (e) in any enactment to a solicitor's being entitled to practise in the Court, or in any other court, or to act in any matter, by reason of his being enrolled in, or of his having subscribed, the list of solicitors practising in that court, shall be construed as a reference to his being entitled so to practise or act by reason of his name being included in the appropriate list provided under section 20.
- (3) In this Act references to any enactment shall, except in so far as the context otherwise requires, be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in this Act.
- (4) In this Act, except in so far as the context otherwise requires.—
  - (a) any reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered;
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered;
  - (c) a reference in a section, subsection or Schedule to a numbered or lettered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered or lettered; and
  - (d) a reference to any provision of an Act (including this Act) includes a reference to any Schedule incorporated in the Act by that provision.

## **66 Transitional and savings provisions, and repeals**

- (1) Schedule 6 (Transitional and savings provisions) shall have effect, but the provisions of that Schedule shall not be taken as prejudicing the operation of section 16 of the Interpretation Act 1978 (general savings in respect of repeals).
- (2) The enactments specified in Schedule 7 are hereby repealed to the extent shown in column 3 of that Schedule.

**67 Citation, extent and commencement**

- (1) This Act may be cited as the Solicitors (Scotland) Act 1980.
- (2) This Act extends to Scotland only.
- (3) This Act shall come into operation on the expiration of one month from the date on which it is passed.

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE LAW SOCIETY OF SCOTLAND

##### *Constitution and Proceedings*

- 1       The Society shall be a body corporate with a common seal and may sue and be sued in its own name.
- 2       The Council shall prepare a scheme providing for—
  - (a) the constitution, election, and proceedings of the Council;
  - (b) the meetings of the Society ;
  - (c) the appointment of a chairman, vice-chairman, secretary and other officers and employees of the Society ;
  - (d) the appointment and constitution of committees.
- 3       The scheme prepared under paragraph 2—
  - (a) may make provision enabling the Council to admit as honorary members of the Society persons who have ceased to be practising solicitors, no such honorary member being entitled to vote at meetings of the Society or liable to pay an annual subscription;
  - (b) shall make provision for the admission on application made in that behalf and on payment of the annual subscription as a member of the Society of any solicitor who by virtue of the provisions of section 24 is exempted from taking out a practising certificate;
  - (c) may contain such other provisions with respect to the administration, management and proceedings of the Society as are considered necessary or proper and are consistent with the provisions of this Act.
- 4       A scheme prepared under paragraph 2 shall have effect on being approved by a resolution passed by a majority of the members present in person or by proxy at a general meeting of the Society, or at an adjournment of such meeting.
- 5       The Society may by a resolution passed by a majority consisting of not less than two-thirds of the members of the Society present in person or by proxy at a meeting of the Society of which due notice specifying the intention to propose the resolution has been given, or at any adjournment of such meeting, rescind, add to or amend any of the provisions of the scheme so approved.

##### *Revenue*

- 6       Subject to paragraph 7, every member of the Society shall pay to the Society along with his application for a practising certificate such annual subscription as may be fixed from time to time by the Society in general meeting.
- 7       The annual subscription payable by a solicitor in respect of the year in which he is first included in the roll of solicitors and in respect of each of the two years

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immediately following shall be one half of the amount of the annual subscription fixed under paragraph 6.

- 8 Except as otherwise provided in this Act, the expenses of the Society shall be defrayed out of the subscriptions and other income received by the Society or the Council and out of other property belonging to the Society.

In this paragraph " expenses of the Society " includes the expenses of the Tribunal so far as not otherwise defrayed and any expenses incurred by the Council in the exercise of their functions under this Act, and the reasonable travelling and maintenance expenses of members of the Council or committees of the Council incurred in attending meetings of the Council or committees, or otherwise incurred in the business of the Society.

- 9 Paragraph 8 does not affect any trust constituted for a special purpose.

#### *Powers*

- 10 The Society may—
- (a) purchase or otherwise acquire land for any of the purposes of this Act;
  - (b) sell, lease or otherwise dispose of land so acquired ;
  - (c) borrow for any of the purposes of this Act in such manner and on such security as they may determine ;
  - (d) invest any monies not immediately required to meet expenses and other outlays of the Society in any investment in which trustees in Scotland are by law authorised to invest (but nothing in this sub-paragraph prevents the investment of any monies forming any part of any property held in trust for a special purpose in any class of investment authorised by the deed constituting the trust) ;
  - (e) accept any gift of property for the purposes of the Society ;
  - (f) accept, hold and administer any gift of property or hold as trustees any property for any purpose which the Society consider to be for the benefit of solicitors in Scotland or their dependants or employees or any substantial body of such solicitors or dependants or employees ; and
  - (g) subject to the provisions of this Act exercise the functions formerly exercised by the General Council of Solicitors in Scotland.

- 11 The Council may—
- (a) act for and in the name of the Society in any matter other than a matter which in accordance with the provisions of this Schedule is to be determined by the Society in general meeting;
  - (b) without prejudice to any other powers they may have, take into consideration and make recommendations or representations with regard to any matters which are in their opinion of importance to solicitors in Scotland.

#### *Attestation*

- 12 Any deed to which the Society are a party shall be held to be validly executed on behalf of the Society if it is sealed with the common seal of the Society and subscribed on behalf of the Society by two members of the Council and the secretary of the Society or other person appointed by the Council to act for the secretary without attestation by witnesses.

## SCHEDULE 2

Section 11.

### THE ROLL : DIRECTIONS BY THE LORD PRESIDENT AND ANCILLARY PROVISIONS

- 1 The Lord President may authorise the Council (as registrar of solicitors) for the purpose of maintaining the roll as correctly as is reasonably practicable—
- (a) to remove from the roll the name of any solicitor who has died;
  - (b) to send to any solicitor at his address as shown in the roll a letter enquiring whether he wishes to continue to have his name included in the roll and intimating that if no reply is made within the period of 6 months beginning with the date of the posting of the letter his name may be removed from the roll;
  - (c) to send any solicitor on the roll who has for at least 3 years been so enrolled in pursuance of regulations made by the Council under section 5 on an undertaking by him to serve a post qualifying year for practical training which the Council are not satisfied that he has implemented, a letter enquiring whether he intends to fulfil that undertaking and intimating that unless a reply which the Council regard as satisfactory is received within the period of 6 months beginning with the date of the posting of the letter his name may be removed from the roll; and
  - (d) if a reply indicating that he does not wish that his name shall continue to be included in the roll is returned by any solicitor to whom a letter has been so sent, or if no reply or in a case of a letter sent under subparagraph (c) a reply which the Council do not regard as satisfactory is returned within the period mentioned in subparagraph (b) or (c), as the case may be, by any such solicitor, to remove the name of that solicitor from the roll.
- 2 The Council may, on the application of a solicitor whose name has been removed from the roll in pursuance of paragraph 1(d), and on payment by him to the Council of such reasonable fee in respect of restoration as the Council may fix, order that his name shall be restored to the roll.
- 3 Any person aggrieved by a decision of the Council under paragraph 2 may appeal against the decision to the Court, and the provisions of section 40(3) shall, subject to any necessary modifications, apply to any such appeal.

## SCHEDULE 3

Section 43.

### PART I

#### THE SCOTTISH SOLICITORS GUARANTEE FUND

##### *Contributions by Solicitors*

- 1 (1) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund by every solicitor in respect of each year during which, or part of which, he is in practice as a solicitor, along with his application for a practising certificate, a contribution (hereafter referred to as an "annual contribution ") not exceeding the sum of £25.



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- (2) The sum payable by a solicitor in respect of the year in which he first commences to practise after admission and in respect of each of the 2 years immediately following shall be one half of the annual contribution.
- (3) The Council shall not later than 31 July in each year fix the amount, if any, of the annual contribution to be paid in respect of the following year.
- (4) No annual contribution shall be payable by a solicitor so long as the amount of the Guarantee Fund including the value of all investments forming part of the Fund and after providing for all outstanding liabilities, is in the opinion of the Council not less than £250,000 or such other sum as the Council may from time to time determine.
- (5) If at any time the Council are of the opinion that the liabilities of the Guarantee Fund render it expedient in order to secure the financial stability of the Fund, the Council may, by resolution of which not less than 10 days' previous notice in writing has been given to each member of the Council, impose upon every solicitor a contribution (hereafter referred to as a " special contribution ") of the amount specified in the resolution, and a special contribution shall be payable to the Society in one sum or, if the Council so determine, by instalments on or before such date or dates as may be specified in the resolution.
- (6) No special contribution shall be payable by a solicitor in the year in which he first commences to practise after admission nor in either of the 2 years immediately following.
- (7) The amount payable by way of special contribution by a solicitor shall not in any year exceed the sum of £25.
- (8) No annual contribution and no special contribution shall be payable by any solicitor who is in the employment of another solicitor or of a firm of solicitors and who does not engage in practice as a solicitor on his own account.
- (9) Without prejudice to any other method of recovering contributions payable to the Society under this Schedule whether annual or special a practising certificate shall not be issued to a solicitor except on production of evidence of payment of the contributions (if any) due by him to the Fund on or before the issue of the certificate.
- (10) In this Schedule the expression " year " means the period of 12 months commencing on 1 November or such other day as may be fixed by the Council.

*Investment etc.*

- 2 (1) Monies not immediately required to meet sums payable out of the Guarantee Fund may be invested by the Society in any investments in which trustees in Scotland are by law authorised to invest.
- (2) The Society may borrow money for the purposes of the Guarantee Fund in such manner and on such security as they may determine but the total sum due at any time in respect of any such loans shall not exceed £20,000.
- (3) The accounts of the Guarantee Fund shall be made up annually for the year ending 31 October or on such other day as may be fixed by the Council and shall be audited by an auditor appointed by the Society.
- (4) As soon as the audit is completed the audited accounts and the auditor's report on the accounts shall be submitted to the Council and a copy of the audited accounts and

the auditor's report shall be sent to the Lord Advocate and to every solicitor who is contributing to the Fund.

- (5) All investments and other monies forming part of the Guarantee Fund and the books and accounts relating to that Fund shall be kept separate from the other investments and monies, books and accounts of the Society, and the investments and other monies forming part of the Guarantee Fund shall not be liable for any obligations, debts or liabilities incurred by the Society or the Council in relation to any business of the Society other than the business of the Guarantee Fund, nor shall the investments and other monies of the Society held for the purposes other than those relating to the Guarantee Fund be liable for any obligations, debts or liabilities incurred by the Society or the Council in relation to the Guarantee Fund.

#### *Insurance*

- 3 (1) The Society may enter into a contract of insurance with any person, body of persons or corporation authorised by law to carry on insurance business for guaranteeing the sufficiency of the Guarantee Fund or for any other purpose in relation to the Fund.
- (2) Any such contract of insurance may be entered into in relation to solicitors generally or in relation to any solicitor or solicitors named therein.
- (3) No person other than the Society shall have any right of action against a person, body or corporation with whom any such contract of insurance was entered into or have any right to any monies payable under that contract.

#### *Grants*

- 4 (1) Every application for a grant from the Guarantee Fund shall be in such form as may be prescribed by rules made under this Schedule and shall be accompanied, if so required, by the Council by a statutory declaration and the applicant shall produce to the Council such documents and other evidence as they demand.
- (2) The Council may, as a condition of making a grant out of the Guarantee Fund, require the person to whom the grant is made to assign to the Society at the expense of the Society any rights and remedies competent to him against the solicitor in question, his partner or employee or any other person in respect of the loss.
- (3) A grant from the Guarantee Fund may at the discretion of the Council be paid in one sum or in such instalments as the Council may determine.
- (4) The Council may make rules with regard to the procedure to be followed in giving effect to the provisions of this Act relating to the Guarantee Fund, including matters to be prescribed there-under, and also with respect to any matters incidental, ancillary or supplemental to those provisions or concerning the administration, management or protection of the Guarantee Fund.

## PART II

#### *Power of Council to investigate*

- 5 (1) If under section 38 any person (whether a solicitor or not) having possession or control of any documents mentioned in that section refuses or fails to produce or deliver them immediately on being required by the Council to do so or to cause them

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to be so produced or delivered, the Council may apply to the Court for an order requiring that person to produce or deliver the documents or to cause them to be produced or delivered to the person appointed at the place fixed by the Council within such time as Court may order.

- (2) Upon taking possession of any such documents which have been produced or delivered to the Council, the Council shall serve upon the solicitor mentioned in section 38, and every such person, a notice giving particulars and the date on which they took possession.
- (3) Every requirement made or notice given under section 38 or under this Part of this Schedule shall be in writing under the hand of such person as may be appointed by the Council for the purpose and may be served either personally or by registered letter or by a letter sent by recorded delivery service addressed to the last known place of business or residence of the person to whom the requirement is made or notice given.
- (4) Within 14 days after service of a notice under sub-paragraph (2) the person upon whom such notice has been served may apply to the Court for an order directing the Council to return such documents to the person from whom they were received by the Council or to such other person as the applicant may request and on the hearing of any such application the Court may make the order applied for or such other order as they think fit.
- (5) If no application is made to the Court under sub-paragraph (4) or if the Court on any such application directs that the documents in question remain in the custody or control of the Council, the Council may make enquiries to ascertain the person to whom they belong and may deal with the documents in accordance with the directions of that person.

## SCHEDULE 4

Sections 50, 52.

### CONSTITUTION, PROCEDURE AND POWERS OF TRIBUNAL

#### PART I

##### *Constitution*

- 1 The Tribunal shall consist of—
  - (a) not less than 5 and not more than 7 members (in this Part referred to as "solicitor members") who are solicitors recommended by the Council as representatives of the solicitors' profession throughout Scotland, and
  - (b) two members (in this Part referred to as "lay members") who are neither solicitors nor advocates,  
appointed by the Lord President.
- 2 Each member of the Tribunal shall retire from office on the expiry of 5 years from the date of his appointment, but on the recommendation of the Council shall be eligible for re-appointment.
- 3 The Lord President may from time to time terminate the appointment of any member of the Tribunal, and may fill any vacancy therein by the appointment of a

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solicitor recommended by the Council or, as the case may be, by the appointment of a lay member.

4 The Tribunal may appoint one of their number to be chairman, and may also appoint a clerk, who shall not be a member of the Tribunal, and, subject to the provisions of this Act, may regulate their procedure in such way as they may think fit.

5 The Tribunal shall be deemed to be properly constituted if—

- (a) at least 4 members are present, and
- (b) at least 1 lay member is present, and
- (c) the number of solicitor members present exceeds the number of lay members present.

6 There shall be paid to the lay members of the Tribunal out of money provided by Parliament such fees and allowances as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

## PART II

### PROCEDURE AND POWERS OF TRIBUNAL

#### *Complaints*

7 The making of a complaint to the Tribunal or the giving of any information in connection with a complaint shall confer qualified privilege.

8 A complaint made to the Tribunal shall not be withdrawn except with the Tribunal's leave and subject to such conditions with respect to expenses or otherwise as the Tribunal thinks fit.

9 Subject to Part IV, the Tribunal may dismiss a complaint against a solicitor—

- (a) without requiring the solicitor to answer the allegations made against him or without holding any enquiry if—
  - (i) they are of the opinion that the complaint discloses no *prima facie* case of professional misconduct on the part of the solicitor ; or
  - (ii) the complainer fails to comply with any rule made under section 52 ; or
- (b) without hearing parties if they are of the opinion upon consideration of the complaint and other documents that they disclose no case of professional misconduct on the part of the solicitor.

10 The Tribunal shall give notice of the complaint to the solicitor against whom the complaint is made (" the respondent") and shall enquire into the complaint, giving him reasonable opportunity of making his defence.

11 For the purpose of enquiring into the complaint the Tribunal may administer oaths and receive affirmations ; and the complainer and respondent shall each be entitled—

- (a) to require the evidence of parties, witnesses and others interested, and
- (b) to call for and recover such evidence and documents, and examine such witnesses, as they think proper, but no person shall be compelled to produce any document which he could not be compelled to produce in an action.

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- 12 On a petition by the complainer or the respondent to the Court, or to the sheriff having jurisdiction in any place in which the respondent carries on business, the Court or, as the case may be, the sheriff, on production of copies (certified by the clerk of the Tribunal) of the complaint and answers, if lodged, together with a statement signed by the clerk specifying the place and date of the hearing of the complaint and certifying that notice to that effect has been given to the complainer and to the respondent, and on being satisfied that it would be proper to compel the giving of evidence by any witness or the production of documents by any haver, may-
- (a) grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Tribunal, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation;
  - (b) grant warrant for the recovery of documents ; and
  - (c) appoint commissioners to take the evidence of witnesses, to examine havers, and to receive exhibits and productions.

#### *Decisions*

- 13 The Tribunal shall set out in their decision—
- (a) in the case of a complaint, the facts proved, and
  - (b) in the case of a conviction, particulars of the conviction and sentence,
- and shall in the case of a complaint add to their decision a note stating the grounds on which the decision has been arrived at.
- 14 Every decision on the Tribunal shall be signed by the chairman or other person presiding and may be published in such manner as the Tribunal may determine.
- 15 A copy of every decision by the Tribunal certified by the clerk shall be sent forthwith by the clerk to the respondent and to the complainer intimating the right of appeal available from that decision under this Act.
- 16 In the case of a decision by the Tribunal—
- (a) ordering a solicitor to be struck off the roll; or
  - (b) ordering a solicitor to be suspended from practice ; or
  - (c) censuring a solicitor ; or
  - (d) fining a solicitor,
- on the expiration of the days of appeal without an appeal being lodged or, where an appeal has been lodged, if and as soon as the appeal is withdrawn or a decision by the Court is given in terms of subparagraphs (a) to (d) or in the case of a decision of the Tribunal under section 53(6) which has not been varied or quashed by the Court, the clerk of the Tribunal shall immediately send to the Council a copy of the decision of the Tribunal certified by him and a copy of the decision by the Court in any appeal, and the Council shall forthwith give effect to any order as to striking the solicitor off the roll and to any terms and conditions directed by the Tribunal under section 53(5); and in any other case shall cause a note of the effect of the decision to be entered against the name of the solicitor in the roll.
- 17 The Council shall forthwith intimate any order striking a solicitor off the roll or suspending a solicitor from practice to each sheriff clerk and also, in the case of a solicitor who carried on business in Edinburgh immediately before the order, to the Principal Clerk of Session, and shall cause a notice of the operative part of the

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order to be published in the Edinburgh Gazette and in such other manner, if any, as the Tribunal may direct.

- 18 The file of orders under this Act striking solicitors off the roll, suspending solicitors from practice or restoring persons to the roll shall be open for inspection at the office of the Society at any reasonable hour by any person without payment of any fee.

#### *Expenses*

- 19 Subject to the provisions of Part IV, the Tribunal may make in relation to any complaint against a solicitor such order as it thinks fit as to the payment by the complainer or by the respondent of the expenses incurred by the other party and by the Tribunal or a reasonable contribution towards those expenses.
- 20 On the application of the person in whose favour an order for expenses under paragraph 19 is made and on production of a certificate by the clerk of the Tribunal that the days of appeal against the order have expired without an appeal being lodged or, where such an appeal has been lodged, that the appeal has been dismissed or withdrawn, the Court may grant warrant authorising that person to recover those expenses from the person against whom the order was made.
- 21 Such warrant shall have effect for execution and for all other purposes as if it were an extracted decree of court awarded against the person against whom the order of the Tribunal was made.
- 22 The expenses of the Tribunal so far as not otherwise defrayed shall be paid by the Society as part of the expenses of the Society.

### SCHEDULE 5

Section 49.

#### LAY OBSERVER

- 1 The lay observer shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.
- 2 The Secretary of State may give general directions to the lay observer about the scope and discharge of his functions, and shall publish any such directions.
- 3 The Society shall consider any report or recommendation which it receives from the lay observer, and shall notify him of any action which it has taken in consequence.
- 4 The Secretary of State may appoint staff for the lay observer.
- 5 Remuneration for the lay observer and his staff and any other expenses of the lay observer shall be paid out of money provided by Parliament.
- 6 In determining the terms of employment and remuneration of the lay observer and his staff, the number of his staff and any amount payable by way of expenses under paragraph 5, the Secretary of State shall act only with the approval of the Minister for the Civil Service.
- 7 The Society shall furnish the lay observer with such information as he may from time to time reasonably require.

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- 8 The Secretary of State shall direct the submission to him of an annual report by the lay observer on the discharge of the functions conferred on the lay observer by this Act.
- 9 The Secretary of State shall lay a copy of any report under paragraph 8 before each House of Parliament.
- 10 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership) there shall be inserted at the appropriate place in alphabetical order the entry " Lay observer appointed under section 49 of the Solicitors (Scotland) Act 1980 ".

## SCHEDULE 6

Section 66.

### TRANSITIONAL AND SAVINGS PROVISIONS

#### *General*

- 1 (1) Insofar as—
- (a) any agreement, appointment, operation, authorisation, determination, scheme, instrument, order or regulation made by virtue of an enactment repealed by this Act, or
  - (b) any approval, consent, direction or notice given by virtue of such an enactment, or
  - (c) any complaint made or investigation begun by virtue of such enactment, or
  - (d) any other proceedings begun by virtue of such an enactment, or
  - (e) anything done or having effect as if done,
- could, if a corresponding enactment in this Act were in force at the relevant time, have been made, given, begun or done by virtue of the corresponding enactment, it shall, if effective immediately before the corresponding enactment comes into force, continue to have effect thereafter as if made, given, begun or done by virtue of that corresponding enactment.
- (2) Where—
- (a) there is any reference in this Act (whether expressed or implied) to a thing done or required or authorised to be done, or a thing omitted, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of this Act, then
  - (b) that reference shall be construed (subject to its context) as including a reference to the corresponding thing, done or required or authorised to be done, or omitted, or to the corresponding events which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any of the corresponding provisions of the repealed enactments.
- 2 Where any enactment passed before this Act or any instrument of document refers either expressly or by implication to an enactment repealed by this Act, the reference shall (subject to its context) be construed as or as including a reference to the corresponding provision of this Act.
- 3 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if its corresponding provision has been in force when that period began to run.

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*Admission of enrolled law agent*

- 4 Notwithstanding the repeal by this Act of section 15 of the Solicitors (Scotland) Act 1933, the Court may grant an application to be admitted as a solicitor to any applicant who was on 28th June 1933 entitled to be admitted as an enrolled law agent according to the regulations for admission then in force under the Law Agents (Scotland) Act 1873.

*Restriction of grant under Guarantee Fund*

- 5 Notwithstanding the repeal by this Act of section 22(2)(b) of the Legal Aid and Solicitors (Scotland) Act 1949, no grant shall be made by the Council under section 43 in respect of a loss which in the opinion of the Council arose before 1st November 1951.

*Rights of banks*

- 6 Nothing in section 61(3) shall deprive a bank of any right existing on 1st November 1949.

*Admission to societies*

- 7 Notwithstanding the repeal by this Act of sections 44 and 45 of the Solicitors (Scotland) Act 1933 any society may—
- (a) admit a solicitor as a member on such conditions as it thinks fit;
  - (b) accept as a qualification for admission an apprenticeship served under the provisions of this Act with a solicitor who is not a member.

*Powers of societies*

- 8 The repeal of Section 35 of the Solicitors (Scotland) Act 1933 is without prejudice to powers of control exercisable by any society over its members, being powers the society were entitled to exercise immediately before 1st March 1934.

In this paragraph and in paragraph 7, " society " means a faculty or society of solicitors in Scotland, incorporated by Royal Charter or otherwise formed in accordance with law, other than the Law Society of Scotland.

*Saving for non-qualified person to conduct certain proceedings*

- 9 Nothing in this Act shall affect any enactment empowering any person, not being a person qualified to act as a solicitor, to conduct, defend or otherwise act in relation to any legal proceedings.

*Register of Law Agents*

- 10 Notwithstanding the repeal by this Act of section 18(1) of the Solicitors (Scotland) Act 1933, the Council shall continue to keep in their custody the Register of Law Agents kept under the Law Agents (Scotland) Act 1873 and any relative documents transferred to then-custody by virtue of section 18(4) of the Solicitors (Scotland) Act 1949.



*Certificate of admission*

- 11 Notwithstanding the repeal by this Act of section 14 of the Solicitors (Scotland) Act 1933, the certificate of admission of a solicitor shall be in writing and signed by a judge of the Court.

SCHEDULE 7

Section 66.

REPEALS

Chapter	Short Title	Extent of Repeal
<a href="#">23 &amp; 24 Geo. 5. c. 21.</a>	The Solicitors (Scotland) Act 1933.	The whole Act.
<a href="#">24 &amp; 25 Geo. 5. c. 45.</a>	The Solicitors Act 1934.	The whole Act.
<a href="#">12 &amp; 13 Geo. 6. c. 63.</a>	The Legal Aid and Solicitors (Scotland) Act 1949.	Part II and Schedules 4 to 7 except section 25(1), (1A), (3), (4), (5).
<a href="#">6 &amp; 7 Eliz. 2. c. 28.</a>	The Solicitors (Scotland) Act 1958.	The whole Act.
<a href="#">1965 c. 29.</a>	The Solicitors (Scotland) Act 1965.	The whole Act.
<a href="#">1976 c. 6.</a>	The Solicitors (Scotland) Act 1976.	The whole Act except section 9.