

These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003

PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

General provisions

Schedule 4 – Miscellaneous provision

Paragraph 12 – Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c.40)

113. *Paragraph 12* makes substantive changes to sections 16 to 18 and 20 to 23 of the 1990 Act, inserts new sections 20A, 21A, 21B and 21C, amends sections 33, 34, 40 and 42, and repeals section 19 and Schedule I.
114. *Sub-paragraph (2)*. This sub-paragraph substitutes a new section 16 in the 1990 Act which confers the function of regulating the provision of conveyancing and executry services under sections 17 to 23 of the 1990 Act on the Council of the Law Society of Scotland. The Scottish Ministers are empowered to make grants to the Council towards expenses incurred, or to be incurred, by them in connection with the exercise of that function and such grants may be made subject to terms and conditions.
115. *Sub-paragraph (3)– Conveyancing practitioners*. This sub-paragraph amends the main provisions dealing with conveyancing practitioners in section 17 of the 1990 Act. The Council of the Law Society of Scotland is to take over the Board's responsibility for maintaining a register of conveyancing practitioners, which is to include entries in respect of all conveyancing practitioners registered with the Board immediately before its abolition takes effect. Entries in the register which relate to independent conveyancing practitioners are to be annotated to that effect. The Council may charge such fees for registration as they may determine. In granting an application for registration, the Council may attach such conditions as they may determine; when attaching conditions or when refusing an application, the Council must give the applicant written reasons for their decision.
116. The effect of the repeal of section 17(7) of the 1990 Act is that the Council of the Law Society of Scotland will not be able to consider applications for registration as an independent conveyancing practitioner, though practitioners already registered with the Board as independent conveyancing practitioners will be able to continue to practise in that capacity.
117. Section 17(3) and (11) of the 1990 Act are replaced by new subsection (11) which gives the Council powers to make rules for regulating the conduct and practice of conveyancing practitioners and independent conveyancing practitioners. The Council is to assume the powers of the Board to make rules as to the requirements to be satisfied by applicants for registration as conveyancing practitioners in relation to educational qualifications and practical training. The powers of the Scottish Ministers to make regulations to maintain appropriate standards of conduct and practice by independent

These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003

conveyancing practitioners are transferred to the Council, but as a power to make rules for such matters. Rules made by the Council are to be approved by the Lord President of the Court of Session and the Scottish Ministers after consultation with the Director General of Fair Trading. Existing rules and regulations made by the Board or the Scottish Ministers are kept in effect, but the Council is given the power to amend or repeal them.

118. *Sub-paragraph (4) – Executry practitioners.* This sub-paragraph amends the main provisions dealing with executry practitioners in section 18 of the 1990 Act. The Council of the Law Society of Scotland is to take over the Board’s responsibility for maintaining a register of executry practitioners, which is to include entries in respect of all executry practitioners registered with the Board immediately before its abolition takes effect. Applications may be made only by natural persons; section 18(3) of the 1990 Act is repealed as it does not relate to natural persons, but to recognised financial institutions in terms of section 19 of the 1990 Act. The Council may charge such fee for registration as they may determine.
119. Section 18(10) of the 1990 Act gave the Scottish Ministers powers to make regulations to maintain appropriate standards of conduct and practice of executry practitioners, and to make provision as to educational qualifications and practical training. Under the new subsection (10) the Council is to assume these powers, but as powers to make rules which will require the approval of the Lord President of the Court of Session, and the Scottish Ministers after consultation with the Director General of Fair Trading.
120. *Sub-paragraph (5) – Executry services by recognised financial institutions.* This sub-paragraph repeals section 19 of the 1990 Act which provided for the Board to vet applications from financial institutions such as banks and building societies to perform executry work. It was intended that applicant institutions should satisfy the Board that they complied with requirements set out in regulations regarding educational qualifications and practical training for those of their employees to be engaged in the provision of executry services and related complaint procedures. Section 19 has not been brought into force and is now to be repealed.
121. *Sub-paragraph (6) – Professional misconduct, inadequate professional services, etc.* This sub-paragraph amends section 20 of the 1990 Act to implement the detailed changes required to that Act in relation to disciplinary arrangements for conveyancing and executry practitioners (see text on section 13 above).
122. *Sub-paragraphs (6)(d) and (e)* transfer from the Board to the Scottish Solicitors’ Discipline Tribunal powers to suspend or revoke a registration, impose a fine of up to £10,000 or censure a practitioner. These will be the main sanctions available to the Tribunal where it is satisfied after an inquiry that a practitioner has been guilty of professional misconduct or has provided inadequate professional services; or where a practitioner has been convicted by any court of an act involving dishonesty or been sentenced to a term of imprisonment of not less than 2 years.
123. *Sub-paragraph (7)* inserts a new section 20A into the 1990 Act which requires the Council of the Law Society of Scotland to establish a review procedure in relation to their decisions to refuse to grant an application for registration; or to grant such an application subject to conditions; or to exercise their disciplinary powers under section 20(2) of the 1990 Act. The new section follows the equivalent requirement on the Board in paragraph 15 of Schedule 1, which is to be repealed.
124. *Sub-paragraph (9) – Powers of investigation* inserts a new section 21A into the 1990 Act which provides the Council and the Scottish Solicitors’ Discipline Tribunal with powers of investigation in relation to disciplinary inquiries and related matters. The new section replicates the powers of investigation conferred on the Board by Part II of Schedule 1 to the 1990 Act, which is to be repealed.

*These notes relate to the Public Appointments and Public Bodies etc.
(Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003*

125. *Sub-paragraph (9) – Procedures of the Scottish Solicitors’ Discipline Tribunal* inserts a new section 21B into the 1990 Act which applies existing Tribunal powers and procedures in relation to solicitors under Schedule 4 to the Solicitors (Scotland) Act 1980 to (a) any inquiries by the Tribunal into complaints against conveyancing and executry practitioners, and (b) appeals by such practitioners against disciplinary steps taken against them.
126. *Sub-paragraph (9)– Compensation fund* also inserts a new section 21C into the 1990 Act which empowers the Council to establish and maintain a fund to compensate clients who have suffered pecuniary loss because of dishonesty on the part of an independent conveyancing practitioner or an executry practitioner who provides executry services to the public for a fee, gain or reward. The Council may enter into a contract of insurance for the purpose of guaranteeing the sufficiency of the fund and may make rules with regard to the fund’s operation. The Scottish Ministers may make contributions to the fund and defray any premium, fee or other expense payable by the Council in relation to any contract of insurance. The fund managed by the Board is transferred to and vested in the Council; the Board’s rules in relation to the operation of the fund are kept in force and the Council is given the power to amend or repeal them.