



# Legal Profession and Legal Aid (Scotland) Act 2007

## 2007 asp 5

### PART 3

#### LEGAL PROFESSION: OTHER MATTERS

VALID FROM 23/11/2007

#### **58 Constitution of Scottish Solicitors' Discipline Tribunal**

(1) Schedule 4 to the 1980 Act is amended as follows.

(2) For paragraph 1 substitute—

“1 The Tribunal shall consist of not more than 28 members.”

“1A The Tribunal shall consist of equal numbers of—

- (a) members (in this Part referred to as “solicitor members”) appointed by the Lord President, who are solicitors recommended by the Council as representatives of the solicitors' profession throughout Scotland; and
- (b) members (in this Part referred to as “non-lawyer members”) appointed by the Lord President after consultation with the Scottish Ministers, who are not—
  - (i) solicitors;
  - (ii) advocates;
  - (iii) conveyancing practitioners or executry practitioners, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (“the 1990 Act”);
  - (iv) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.

*Status: Point in time view as at 19/03/2007. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Legal Profession and Legal Aid (Scotland) Act 2007, Part 3 is up to date with all changes known to be in force on or before 17 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1B The validity of any proceedings of the Tribunal is not affected by a vacancy in membership of the Tribunal nor by any defect in the appointment of a member.

1C The Scottish Ministers may by order made by statutory instrument amend paragraph 1 so as to vary the maximum number of members of the Tribunal.

1D A statutory instrument containing an order made under paragraph 1C is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(3) In paragraph 2(a), for “lay” substitute “ non-lawyer ”.

(4) In paragraph 3, for “lay” substitute “ non-lawyer ”.

(5) In paragraph 5—

(a) in sub-paragraph (b), for “1 lay member is” substitute “ 2 solicitor members are ”;

(b) for sub-paragraph (c) substitute—

“(c) at least 2 non-lawyer members are present.”;

(c) sub-paragraph (d) is repealed.

(6) In paragraph 6, for “lay” substitute “ non-lawyer ”.

VALID FROM 23/11/2007

**59 Scottish Solicitors Guarantee Fund: borrowing limit**

In paragraph 2(2) of Schedule 3 (Scottish Solicitors Guarantee Fund) to the 1980 Act, for “£20,000” substitute “ £1,250,000 ”.

VALID FROM 23/11/2007

**60 Safeguarding interests of clients**

(1) The 1980 Act is amended as follows.

(2) In section 45 (safeguarding interests of clients of solicitors struck off or suspended)—

(a) after subsection (4), insert—

“(4A) Where—

(a) a solicitor is restricted from acting as a principal; and

(b) immediately before the restriction the solicitor was a sole solicitor,

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the right to operate on, or otherwise deal with, any client account in the name of the solicitor or the solicitor's firm shall on the occurrence of those circumstances vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person until such time as the Council have approved acceptable other arrangements in respect of the client account.”;

- (b) in subsection (5), after the definition of “material date”, insert—

““principal” means a solicitor who is a sole practitioner or is a partner in a firm of two or more solicitors or is a director of an incorporated practice which is a company or a solicitor who is a member of a multi-national practice having its principal place of business in Scotland;”.

## 61 Offence for unqualified persons to prepare certain documents

In section 32(2) of the 1980 Act (offence for unqualified persons to prepare certain documents), after paragraph (e) add “; or

- (f) to a member of a body which has made a successful application under section 25 of the 1990 Act but only to the extent to which the member is exercising rights acquired by virtue of section 27 of that Act”.

VALID FROM 23/11/2007

## 62 Notaries public to be practising solicitors

- (1) The 1980 Act is amended as follows.
- (2) In section 57(2), after “solicitor” insert “ qualified to practise in accordance with section 4 ”.
- (3) In section 58, after subsection (4) insert—
  - “(5) Where a person who is a solicitor and a notary public no longer has in force a practising certificate, the Council shall forthwith remove the person's name from the register of notaries public.
  - (6) If the person mentioned in subsection (5) becomes qualified to practise as a solicitor in accordance with section 4, the Council shall restore the person's name to the register of notaries public.”.

VALID FROM 23/11/2007

## 63 Regulation of notaries public

After section 59 of the 1980 Act, insert—

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#### **“59A Rules regarding notaries public**

- (1) Subject to subsections (2) and (3), the Council may, if they think fit, make rules for regulating in respect of any matter the admission, enrolment and professional practice of notaries public.
- (2) The Council shall, before making any rules under this section—
  - (a) send to each notary public a draft of the rules; and
  - (b) take into consideration any representations made by any notary public on the draft.
- (3) Rules made under this section shall not have effect unless the Lord President, after considering any representations the Lord President thinks relevant, has approved the rules so made.
- (4) If a notary public fails to comply with any rule made under this section that failure may be treated as professional misconduct or unsatisfactory professional conduct on the part of the solicitor who is the notary public.”.

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