

**Changes to legislation:** Solicitors (Scotland) Act 1980, SCHEDULE 3 is up to date with all changes known to be in force on or before 08 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) View outstanding changes

## SCHEDULES

### SCHEDULE 3 **S**

Section 43.

#### PART 1 **S**

#### 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”). . . <sup>F1</sup>
- (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.
- <sup>F2</sup>(2A) Sub-paragraphs (1) and (2) do not apply to solicitors who are
- <sup>F3</sup>(a) [ directors<sup>F4</sup> or members] of incorporated practices]<sup>F5</sup> or
- (b) investors in licensed legal services providers.]
- (2B) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund
- <sup>F6</sup>(a) [ by every incorporated practice in respect of each year during which, or part of which, it is recognised under section 34(1A) a contribution (hereafter referred to as an “ annual corporate contribution ”) in accordance with the [<sup>F7</sup>relevant scale of annual corporate] contributions referred to in sub-paragraph (3).]<sup>F8</sup>, and
- (b) by every licensed provider, in respect of each year during which or part of which it operates as such under the licence issued by its approved regulator, a contribution (also an “annual corporate contribution”) in accordance with the relevant scale of annual corporate contributions referred to in sub-paragraph (3).]
- (3) The Council shall not later than [<sup>F9</sup>30 September] in each year fix the amount, if any, of the annual contribution to be paid in respect of the following year [<sup>F10</sup>and the [<sup>F11</sup>scales] of the annual corporate contributions to be so paid<sup>F12</sup>....]
- <sup>F13</sup>(3A) The scales of annual corporate contributions—
- (a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—
- (i) in the case of incorporated practices, the number of solicitors that they have as directors, members or employees,

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- (ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,
- (b) may otherwise make different provision as between incorporated practices and licensed providers.]
- (4) No annual contribution shall be payable by a solicitor [<sup>F10</sup>and no annual corporate contribution by an incorporated practice][<sup>F14</sup>or a licensed provider] 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 [<sup>F15</sup>upon every incorporated practice [<sup>F16</sup>and licensed provider] a contribution (hereafter referred to as a "special corporate contribution") in accordance with a scale of such contributions fixed by the Council as under subparagraph (3), and a special or special corporate] 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) ..... <sup>F17</sup>
- (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 [<sup>F10</sup>or of an incorporated practice][<sup>F18</sup>or a licensed provider] 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.

#### Textual Amendments

- F1** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. II para. 8\(a\)](#), Sch. 4
- F2** Sub-paras. (2A) and (2B) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 34\(a\)](#)
- F3** Words in Sch. 3 para. 1(2A) renumbered as Sch. 3 para. 1(2A)(a) (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\), ss. 129\(1\)\(a\)\(i\), 150\(2\); S.S.I. 2011/180, art. 3, Sch.](#)
- F4** Words in Sch. 3 para. 1(2A)(a) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\), ss. 129\(1\)\(a\)\(ii\), 150\(2\); S.S.I. 2011/180, art. 3, Sch.](#)

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- F5** Sch. 3 para. 1(2A)(b) and word inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(a)(iii)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F6** Words in Sch. 3 para. 1(2B) renumbered as Sch. 3 para. 1(2B)(a) (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(b)(i)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F7** Words in Sch. 3 para. 1(2B)(a) substituted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(b)(ii)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F8** Sch. 3 para. 1(2B)(b) and word inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(b)(iii)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F9** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. II para. 8(b)**
- F10** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 34(a)**
- F11** Word in Sch. 3 para. 1(3) substituted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(c)(i)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F12** Words in Sch. 3 para. 1(3) repealed (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(c)(ii)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F13** Sch. 3 para. 1(3A) inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(d)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F14** Words in Sch. 3 para. 1(4) inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(e)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F15** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 34(a)**
- F16** Words in Sch. 3 para. 1(5) inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(f)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F17** Para 1(7) repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. II para. 8(c)**, Sch. 4
- F18** Words in Sch. 3 para. 1(8) inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 129(1)(g)**, 150(2); S.S.I. 2012/152, art. 2, sch.

### *<sup>F19</sup> Contributions by registered European lawyers*

#### **Textual Amendments**

- F19** Sch. 3 para. 1A and cross-heading inserted (22.5.2000) by The European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121), regs. 1(1), 37(1), **Sch. 1 para. 1(13)**

- 1A (1) Subject to the provisions of this paragraph, paragraph (1) above shall apply to registered European lawyers as it applies to solicitors and references to a practising certificate shall include references to a registered European lawyer's registration certificate.
- (2) Where a registered European lawyer can prove that—
- he is covered by a guarantee provided in accordance with the professional rules of his home State <sup>F20</sup>or Switzerland, in the case of a Swiss lawyer within the meaning of regulation 7(2) of the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019]; and
  - the guarantee is equivalent in terms of the conditions and the extent of its cover to the Guarantee Fund,
- then to the extent that there is such equivalence that lawyer shall be exempt from the requirements of paragraph (1).

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- (3) Where the equivalence under sub paragraph (2) is only partial, the Society may specify the guarantee obligations a registered European lawyer is required to meet to comply with paragraph (1).
- (4) Subparagraphs (2), (6) and (8) of paragraph (1) shall not apply.
- (5) For the purposes of this paragraph the words "home State" have the same meaning as provided for in regulation 2 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 [<sup>F21</sup>as that regulation has effect by virtue of regulation 6 or 7 of the Services of Lawyers and Lawyer's Practice (EU Exit) (Amendment etc.) (Scotland) Regulations 2019].]

#### Textual Amendments

- F20** Words in sch. 3 para. 1A(2)(a) inserted (31.12.2020) by [The Services of Lawyers and Lawyer's Practice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/127\)](#), reg. 1(1), **sch. para. 1(8)(a)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F21** Words in sch. 3 para. 1A(5) inserted (31.12.2020) by [The Services of Lawyers and Lawyer's Practice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/127\)](#), reg. 1(1), **sch. para. 1(8)(b)**; 2020 c. 1, **Sch. 5 para. 1(1)**

#### <sup>F22</sup>Contributions by registered foreign lawyers

#### Textual Amendments

- F22** Sch. 3 para. 1B and cross-heading inserted (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 12}

- 1B (1) Subject to the provisions of this paragraph, paragraph 1 above shall apply to registered foreign lawyers as it applies to solicitors and in that paragraph as so applied references to a practising certificate shall be construed as references to a registered foreign lawyer's registration certificate.
- (2) Where a registered foreign lawyer can prove that—
- (a) he is covered by a guarantee provided in accordance with the rules of the legal profession of which he is a member; and
  - (b) the guarantee is equivalent in terms of the conditions and the extent of its cover to the Guarantee Fund,
- then to the extent that there is such equivalence that lawyer shall be exempt from the requirements of paragraph 1.
- (3) Where the equivalence referred to in sub paragraph (2) is only partial, the Society may specify the guarantee obligations a registered foreign lawyer is required to meet to comply with paragraph 1.
- (4) The Council may, where it is satisfied that any acts or defaults on the part of a registered foreign lawyer would not result in a grant being made from the Guarantee Fund held under section 43, exempt that lawyer from the requirements of paragraph 1.
- (5) Sub paragraphs (2), (6) and (8) of paragraph 1 shall not apply to registered foreign lawyers.]

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[<sup>F23</sup>1C (1) Paragraph 1 applies to a conveyancing or executry practitioner as it applies to a solicitor.

- (2) But it does so with the following of its provisions to be disregarded—
- (a) the reference in sub-paragraph (1) to an application for a practising certificate,
  - (b) sub-paragraphs (2), (2A), (6) and (9).
- (3) If a conveyancing or executry practitioner fails to pay an annual contribution due by virtue of this paragraph, the Council may suspend (pending payment) the relevant entry in the register maintained by them under section 17(1) or 18(1) of the 1990 Act.
- (4) For the purposes of section 43 and this paragraph, the references to a conveyancing or executry practitioner (or conveyancing or executry services) are to be construed in accordance with section 23 of the 1990 Act.]

#### Textual Amendments

**F23** Sch. 3 para. 1C inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), ss. **129(2)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

#### *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 [<sup>F24</sup>£1,250,000].
- (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.

#### Textual Amendments

**F24** Sum in Sch. 3 para. 2(2) substituted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **59**, 82 (with s. 77); S.S.I. 2007/497, art. 2

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#### Modifications etc. (not altering text)

**C1** Sch. 3 para. 2: transfer of functions (19.5.1999) by S.I. 1999/678, art. 2(1), Sch.

#### 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 [<sup>F25</sup>, incorporated practices and licensed providers] generally or in relation to any solicitor or solicitors [<sup>F26</sup>, incorporated practice or practices or licensed provider or providers] 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.

#### Textual Amendments

**F25** Words in Sch. 3 para. 3(2) substituted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), ss. 129(3)(a), 150(2); S.S.I. 2012/152, art. 2, sch.

**F26** Words in Sch. 3 para. 3(2) substituted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), ss. 129(3)(b), 150(2); S.S.I. 2012/152, art. 2, sch.

#### 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 [<sup>F27</sup> or the incorporated practice in question or its 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.
- [<sup>F28</sup>(3A) The amount of an individual grant from the Guarantee Fund may not exceed £1.25 million.]
- (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 thereunder, 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.

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### Textual Amendments

- F27** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 34\(c\)](#)
- F28** [Sch. 3 para. 4\(3A\)](#) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 130\(a\)](#), 150(2); [S.S.I. 2011/180](#), art. 3, sch.

### Modifications etc. (not altering text)

- C2** [Sch. 3 para. 4\(1\)\(4\)](#) modified (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 14}

- [<sup>F29</sup>5 (1) The Scottish Ministers may by regulations amend the sum specified in paragraph 4(3A).
- (2) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).
- (3) The power to make regulations under sub-paragraph (1) is exercisable by statutory instrument; but a statutory instrument containing any such regulations is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

### Textual Amendments

- F29** [Sch. 3 para. 5](#) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 130\(b\)](#), 150(2); [S.S.I. 2011/180](#), art. 3, Sch.

## PART II **S**

### *Power of Council to investigate*

- 5 (1) If under section <sup>F30</sup> . . . [<sup>F31</sup>45 or 46] 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 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 [<sup>F32</sup>or incorporated practice] mentioned in section <sup>F30</sup> . . . [<sup>F31</sup>45 or 46], 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 <sup>F30</sup> . . . [<sup>F31</sup> 45 or 46] 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 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.

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- (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.

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#### **Textual Amendments**

- F30** Words in Sch. 3 para. 5(1)-(3) repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 195, 210, 211, [Sch. 20 para. 1\(18\)](#), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2008/1436, [art. 3](#)
- F31** Words in Sch. 3 para. 5(1)-(3) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(25\)](#) (with s. 77); S.S.I. 2008/311, [art. 2](#)
- F32** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 34\(d\)](#)
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#### **Modifications etc. (not altering text)**

- C3** Sch. 3 para. 5 applied (with modifications) (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 13}



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 12A(2)(ba) inserted by [2010 asp 16 s. 118\(3\)](#)
- s. 32(1)(d) and word inserted by [2010 asp 16 s. 118\(2\)\(a\)\(i\)](#)
- s. 32(2D) inserted by [2010 asp 16 s. 118\(2\)\(a\)\(iv\)](#)
- Sch. 4 para. 1A(b)(iia) inserted by [2010 asp 16 s. 118\(2\)\(b\)](#)