
STATUTORY INSTRUMENTS

1997 No. 316 (S.20)

LEGAL SERVICES

**The Independent Qualified Conveyancers
(Scotland) Regulations 1997**

Made - - - - *10th February 1997*

Coming into force - - *1st March 1997*

The Secretary of State, in exercise of the powers conferred on him by section 17(11) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁾ and of all other powers enabling him in that behalf, and after sending a copy of the proposed Regulations to the Director General of Fair Trading and considering any advice given by the Director in accordance with section 40 of that Act and after consulting such persons as the Secretary of State considers appropriate, hereby makes the following Regulations, a draft of which has been laid before, and approved by a resolution of, each House of Parliament:

**PART I
GENERAL**

Citation and commencement

1. These Regulations may be cited as the Independent Qualified Conveyancers (Scotland) Regulations 1997 and shall come into force on 1st March 1997.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;

“adequate professional services” means professional services of a quality which could reasonably be expected of a competent qualified conveyancer;

“associate”, in relation to an independent qualified conveyancer, means—

(a) a person who is related to that independent qualified conveyancer as mentioned in paragraph (2);

- (b) a person who is a partner or employee of that independent qualified conveyancer; or
- (c) a person who is a director, member or employee of the same company or group of companies in which that independent qualified conveyancer is also a director, member or employee;

“Bank” means an institution authorised under the Banking Act 1987(2) and shall include an European deposit taker as defined in regulation 82(3) of The Banking Co-ordination (Second Council Directive) Regulations 1992(3);

“the Board” means the Scottish Conveyancing and Executry Services Board;

“Building Society” has the same meaning as in section 119(1) of the Building Societies Act 1986(4);

“client” includes a prospective client and, where the client is acting as executor on the estate of a deceased person or as a trustee, includes the client acting in that capacity;

“clients' money” means all money held or received by an independent qualified conveyancer on account of a client for whom that independent qualified conveyancer is providing, or has provided, conveyancing services whether the money is held by that independent qualified conveyancer as agent, trustee or in any other capacity;

“conveyancing services” have the same meaning as in section 23 of the Act;

“executry practitioner” has the same meaning as in section 23 of the Act;

“executry services” have the same meaning as in section 23 of the Act;

“group of companies” means a holding company and its subsidiaries within the meaning of section 736 of the Companies Act 1985(5);

“inadequate professional services” have the same meaning as in section 23 of the Act;

“independent qualified conveyancer” has the same meaning as in section 23 of the Act;

“qualified conveyancer” has the same meaning as in section 23 of the Act;

“qualified person” means a person qualified to practice as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(6) or a qualified conveyancer;

“recognised financial institution” means any institution which is

- (a) an institution authorised by the Bank of England to operate a deposit-taking business under Part I of the Banking Act 1987(7);
- (b) a building society authorised to raise money from its members by the Building Societies Commission under section 9 of the Building Societies Act 1986(8);
- (c) a body authorised to carry on insurance business under section 3 or 4 of the Insurance Companies Act 1982(9); or
- (d) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (a), (b) or (c) above whose business or any part of whose business, consists of the provision of executry services;

“related” shall be construed in accordance with paragraph (2);

(2) 1987 c. 22.

(3) S.I.1992/3218.

(4) 1986 c. 53.

(5) 1985 c. 6; section 736 was substituted by the Companies Act 1989 (c. 40), section 144.

(6) 1980 c. 46.

(7) 1987 c. 22.

(8) 1986 c. 53; section 9 was amended and repealed in part by S.I. 1992/3218.

(9) 1982 c. 50.

“solicitor” has the same meaning as in section 65(1) of the Solicitors (Scotland) Act 1980(10);

“specified services” means any services within the following descriptions of services—

- (a) services relating to the acquisition, disposal, valuation or surveying of property or to any estate agency work to which the Estate Agents Act 1979(11) applies;
- (b) services relating to the provision of mortgage finance;
- (c) services relating to banking, investment, insurance or other financial services;
- (d) removal services;
- (e) executry services;
- (f) taxation advisory services; and
- (g) services relating to arranging the provision of any of the services in this definition;

but shall not include any valuation or surveying services provided solely or primarily for the purposes of a person considering providing mortgage finance on the security of the property to be valued or surveyed;

“terms of engagement letter” has the same meaning as in regulation 12,

and other expressions used in these Regulations which are defined in section 23 of the Act shall have the same meaning in these Regulations as they have in that section.

(2) A party (“the first party”) is related to another party (“the second party”) if the first party is—

- (a) the second party’s spouse;
- (b) the second party’s brother, sister, ancestor or descendent;
- (c) the second party’s spouse’s brother, sister, ancestor or descendent; or
- (d) the spouse of any person who, by virtue of sub-paragraphs (b) or (c) above is a relative of the second party.

(3) For the purposes of paragraph (2)—

“ancestor” means a parent or a parent’s parent;

“brother” includes a half-brother and a step-brother;

“descendant” means a child or a child’s child;

“relative” includes a relative by adoption;

“sister” includes a half-sister and a step-sister;

“spouse” includes a former spouse and a person living with another as that person’s husband or wife.

(4) For the purposes of paragraph (3)—

“child” includes a step-child; and

“parent” includes a step-parent.

(5) Unless the context otherwise requires, any reference in these Regulations—

- (a) to a numbered section is to the section bearing that number in the Act;
- (b) to a numbered regulation is to the regulation bearing that number in these Regulations; and
- (c) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

(10) 1980 c. 46.

(11) 1979 c. 38.

PART II

GENERAL STANDARDS OF CONDUCT

General Principles

3. In providing conveyancing services to a client, an independent qualified conveyancer shall at all times—

- (a) observe the law; and
- (b) ensure that he does not allow his independence to be impaired in any way,

and, subject to those general duties,

- (c) provide adequate professional services;
- (d) act in the best interests of his client;
- (e) carry out his client’s instructions with the care and skill necessary to the matter in hand; and
- (f) advise his client when his client’s instructions are in respect of matters outwith his knowledge or professional competence or when he is unable to provide adequate professional services or when his client should consider instructing another independent qualified person.

Confidentiality

4.—(1) An independent qualified conveyancer shall treat any communication made to or by him in the course of his acting as such for a client as confidential in like manner as if he had at all material times been a solicitor acting for the client.

(2) Paragraph (1) shall not prevent an independent qualified conveyancer from disclosing any such communication to a qualified person (“the relevant qualified person”), who is directing, supervising or carrying out the conveyancing services (or who may direct, supervise or carry out such services) for the client to whom the communication relates, insofar as the communication is relevant to the conveyancing transaction.

(3) An independent qualified conveyancer shall take all reasonable steps to ensure that the relevant qualified person is also required to comply with the obligation specified in paragraph (1), except that the relevant qualified person may disclose to the independent qualified conveyancer any communication which is relevant to the conveyancing transaction.

(4) The obligations referred to in paragraphs (1) and (3) shall not apply to any communication the disclosure of which has been agreed to in writing by the client.

Fees

5. An independent qualified conveyancer shall ensure that the fees he charges for the conveyancing services provided for a client are fair and reasonable, having regard to:—

- (a) the nature of the work done;
- (b) the skill and time necessary to complete the work;
- (c) the degree of urgency required by the client;
- (d) the amount and value of any property or transaction involved; and
- (e) any specialised or unusual knowledge required.

Tying-in

6.—(1) An independent qualified conveyancer shall not refuse to accept instructions to provide a client with conveyancing services on the ground that the client has declined to instruct that independent qualified conveyancer or an associate to provide any of the specified services.

(2) Where an independent qualified conveyancer provides any of the specified services in addition to conveyancing services, any material published by that independent qualified conveyancer for the purpose of advertising the conveyancing services shall make it clear that the conveyancing services may be provided to a client by that independent qualified conveyancer whether or not that independent qualified conveyancer also provides the client with any of the specified services.

(3) Before an independent qualified conveyancer accepts instructions from a client to provide conveyancing services, he shall ascertain—

- (a) whether the client has been offered any of the specified services by an associate or by any other person; and, if so,
- (b) whether the client has been offered those services on the express condition that he uses the independent qualified conveyancer for the provision of conveyancing services,

and the independent qualified conveyancer shall not knowingly act for such a client.

Independent financial advice

7. An independent qualified conveyancer shall, before he accepts instructions from a client to provide conveyancing services, advise the client in the terms of engagement letter of his right to obtain independent financial advice in connection with the provision of those services or with any transaction to which those services relate and shall take no action to prevent the client obtaining such advice.

Duty to colleagues

8.—(1) An independent qualified conveyancer shall at all times not knowingly mislead other independent qualified conveyancers, solicitors executry practitioners or recognised financial institutions (“his colleagues”) or break any undertaking which he has given to his colleagues and shall act with his colleagues in a manner consistent with persons having mutual trust and confidence in each other.

(2) Where an independent qualified conveyancer authorised by and acting for a client employs or instructs another qualified conveyancer or a solicitor or an executry practitioner, or a recognised financial institution, he shall (whether or not he discloses the client) be liable to that other person for that person’s fees and outlays unless, at the time of the employment or instruction, he expressly disclaims any such liability.

PART III

CONFLICTS OF INTEREST

Actual and potential conflicts between client and independent qualified conveyancer

9. Where an independent qualified conveyancer (whether before or after accepting instructions to provide a client with conveyancing services) knows, or ought reasonably to know, of circumstances that result, or may result, in a conflict between the interests of that client and the independent qualified conveyancer or an associate, the independent qualified conveyancer shall not act or, as the case may be, shall cease to act for that client.

Actual conflicts between clients

10.—(1) Subject to paragraphs (2) and (3), where an independent qualified conveyancer (whether before or after accepting instructions to provide a client with conveyancing services) knows, or ought reasonably to know, of circumstances that result in an actual conflict between the interests of that client and any other person who is a client either of the independent qualified conveyancer or of an associate, the independent qualified conveyancer shall not act or, as the case may be, shall cease to act for that client or those clients.

(2) For the avoidance of doubt, the circumstances in paragraph (1) that result in an actual conflict of interests include any circumstances whereby the independent qualified conveyancer is providing conveyancing services for one party to a transaction and that independent qualified conveyancer or an associate of that independent qualified conveyancer is providing (or arranging to provide) conveyancing services or any specified services for another party to that transaction.

(3) Where there is an actual conflict of interests between two or more clients of the independent qualified conveyancer and he would otherwise require not to act or to cease to act for them in pursuance of paragraph (1), he may act or continue to act for one of them (“the chosen client”) if—

- (a) he considers that it would be in the best interests of the chosen client that he act or continue to act for him;
- (b) he notifies all of those clients in writing—
 - (i) of the circumstances that result in an actual conflict between the interests of those clients; and
 - (ii) that the provisions of paragraph (1) would require him not to act or, as the case may be, to cease to act for those clients but he considers that it would be in the best interests of the chosen client that he act or continue to act for him;
- (c) the client or clients for whom the independent qualified conveyancer is already acting agrees or agree with him in writing that, notwithstanding the provisions of paragraph (1), the independent qualified conveyancer may act or continue to act for the chosen client.

Potential conflicts between clients

11.—(1) Subject to paragraph (2), where an independent qualified conveyancer (whether before or after accepting instructions to provide a client with conveyancing services) knows, or ought reasonably to know, of circumstances that may result in an actual conflict between the interests of that client and any other person who is a client either of the independent qualified conveyancer or of an associate, the independent qualified conveyancer shall not act or, as the case may be, shall cease to act for that client or those clients.

(2) Where an independent qualified conveyancer would otherwise require not to act or to cease to act for a client or clients of his in pursuance of paragraph (1), he may act or continue to act for that client or those clients (“the chosen client or clients”) if—

- (a) he considers that it would be in the best interests of that client or those clients that he act or continue to act for him or them;
- (b) he notifies all of those clients in writing—
 - (i) of the circumstances that may result in an actual conflict between the interests of the chosen client or clients and any other person who is either a client of the independent qualified conveyancer or of an associate; and
 - (ii) that the provisions of paragraph (1) would require him not to act or, as the case may be, to cease to act for those clients but he considers that it would be in the best interests of the chosen client or clients that he act or continue to act for him or them;

- (c) the client or clients for whom the independent qualified conveyancer is already acting agrees or agree with him in writing that, notwithstanding the provisions of paragraph (1), the independent qualified conveyancer may act or continue to act for the chosen client or clients.

PART IV

CONDUCT OF CONVEYANCING TRANSACTIONS

Terms of engagement letter, etc

12.—(1) An independent qualified conveyancer shall, before accepting instructions from a client to provide conveyancing services, provide the client with a letter (“the terms of engagement letter”) which informs the client of the terms upon which he will provide conveyancing services for that client, including information relating to the following matters, namely:—

- (a) the total price payable by the client for the provision of the conveyancing services, together with details of the elements included in that total price, including—
 - (i) the fees to be charged by the independent qualified conveyancer;
 - (ii) any expenses or outlays to be met; and
 - (iii) any value added tax or other tax which is likely to be charged;or, where the total price is not ascertainable at the relevant time, of the manner in which the total price will be calculated;
- (b) whether any of the elements included in the total price is variable and, if so, in what circumstances and of the amount of the variation or, if this is not ascertainable at the relevant time, of the manner in which the amount of the variation will be calculated;
- (c) when the whole or any part of the total price or any variation thereof will be required to be paid;
- (d) the nature of the conveyancing services which the independent qualified conveyancer will provide and the length of time that it is likely to take to carry out those services;
- (e) the name of the person who will be providing the conveyancing services;
- (f) the steps that will be taken to keep the client informed of progress;
- (g) the right of the client to obtain independent financial advice in connection with the provision of conveyancing services or with the transaction to which those services relate;
- (h) the right of the client at any time to require the independent qualified conveyancer to cease to provide him with conveyancing services (including, in particular, where there is any variation of the price in terms of sub-paragraph (b) above) and the terms upon which the client may do so;
- (i) the circumstances in which the independent qualified conveyancer may refuse to provide (or cease continuing to provide) the conveyancing services in terms of regulation 22 and as to what happens when he does so;
- (j) the procedures established and maintained by the independent qualified conveyancer under regulation 35 for dealing with any complaints made to him in connection with the provision of conveyancing services; and
- (k) the client may make any complaint to the Board in connection with the provision of conveyancing services by the independent qualified conveyancer including any such complaint where he considers that the independent qualified conveyancer—
 - (i) is guilty of professional misconduct; or

- (ii) has provided inadequate professional services; or
 - (iii) has failed to comply with these Regulations; or
 - (iv) has been convicted of a criminal offence rendering him no longer a fit and proper person to provide conveyancing services as a qualified conveyancer.
- (2) Where an independent qualified conveyancer may also provide a client not only with conveyancing services but also with any of the specified services, he shall, before accepting instructions from the client to provide any of those services, inform the client in writing (whether or not in the terms of engagement letter) not only of the matters required by paragraph (1) but also—
- (a) that the independent qualified conveyancer is willing to provide the conveyancing services both with and without any of the specified services;
 - (b) of the price payable by the client for the provision of conveyancing services alone;
 - (c) of the price payable by the client for the provision of each of the specified services required by the client if the conveyancing services were not also to be provided; and
 - (d) of the total price payable by the client for any combination of the services required.
- (3) In this regulation, the price payable for the provision of any of the specified services means—
- (a) if the amount is known and is fixed, the amount payable for that service;
 - (b) if the amount is known but is liable to vary, that amount and the circumstances in which it may vary;
 - (c) if the amount is not known, the manner in which it will be calculated or the factors which will be relied on in making the calculation;
 - (d) if there is more than one payment payable for that service—
 - (i) the number of payments payable for that service; or
 - (ii) if the payments are periodical, the frequency of such payments and any circumstances in which it may be varied.

Qualified person

13.—(1) The conveyancing services provided by an independent qualified conveyancer for a client shall be carried out by or under the supervision of the independent qualified conveyancer or of a qualified person nominated for that purpose by the independent qualified conveyancer.

- (2) The independent qualified conveyancer shall ensure—
- (a) that the nominated qualified person is identified to the client; and
 - (b) that, so far as is reasonably practicable, the nominated qualified person is regularly available for consultation by the client at his office during normal business hours.
- (3) A nominated qualified person (“the existing nominated qualified person”) may be replaced by another nominated qualified person, either permanently or for a temporary period, only—
- (a) upon the reasonable request of the independent qualified conveyancer, the existing nominated qualified person or the client; or
 - (b) if it is not reasonably practicable for the existing nominated qualified person to act or continue to act in the transaction, either permanently or for temporary periods due to sickness or leave or otherwise,

and, where the existing nominated qualified person is so replaced, the independent qualified conveyancer shall ensure that the client is notified of that fact and of whether the replacement is permanent or temporary and, if temporary, for how long and of the name of the replacement.

Acting for selling client

14.—(1) In taking instructions from a selling client to fix a closing date for offers, an independent qualified conveyancer shall advise the client that, although not bound to accept the highest or indeed any offer, if the client instructs the independent qualified conveyancer to enter negotiations with a view to concluding a bargain with a party who submits an offer at the closing date, the independent qualified conveyancer will not be able to accept any subsequent instructions to enter negotiations with, or accept an offer from, another party unless and until negotiations with the original offerer have fallen through.

(2) In the event of the selling client subsequently attempting to instruct the independent qualified conveyancer to discontinue negotiations entered into with a party whose offer has been timeously received on the closing date in order solely to enter negotiations with or to accept an offer from another party, if the independent qualified conveyancer is successful in persuading the client to adhere to the original instructions, the independent qualified conveyancer may continue to act.

When acting for prospective purchasers

15.—(1) Where a prospective purchaser instructs an independent qualified conveyancer to submit an offer in a closing date situation, the independent qualified conveyancer shall advise the client that, if the offer is unsuccessful, the independent qualified conveyancer will not be able to accept subsequently instructions to submit a revised offer or formal amendment unless expressly invited to do so by the seller's agent.

(2) In the event of the prospective purchaser subsequently attempting to instruct the independent qualified conveyancer to submit a revised offer or formal amendment after the closing date has passed, in the absence of any express invitation to do so by the seller's agent, the independent qualified conveyancer shall decline to implement these instructions but he may accept instructions to intimate to the seller, or to the seller's agent, that, in the event of negotiations with the successful party falling through, the prospective purchaser would be willing to enter into negotiations, but no indication should be given of any increased bid.

Information to clients

16. An independent qualified conveyancer providing conveyancing services for a client shall establish and maintain suitable procedures to ensure that the client is kept informed of the progress of a transaction and shall take such steps as are reasonably necessary to ensure that the client is so informed.

Commissions

17.—(1) Where an independent qualified conveyancer receives or may receive commission in the form of money or otherwise—

- (a) for recommending that a client obtains any service from him or another professional person (whether or not that recommendation is acted upon); or
- (b) if a client acts upon such a recommendation,

he shall—

- (i) when making any such recommendation to the client, inform the client in writing (whether or not in the terms of engagement letter) of this fact and of the amount of the commission which he receives or may receive; and
- (ii) account to the client for the amount of the commission which he receives or may receive, whether by giving it to the client or deducting it from his fee to the client for the provision of conveyancing services or otherwise.

(2) For the purposes of this regulation, the amount of any commission shall be inclusive of value added tax.

Records

18. An independent qualified conveyancer providing conveyancing services for a client shall ensure that proper records are kept of all exchanges with and on behalf of his client, whether written or oral.

Avoidance of delay

19.—(1) An independent qualified conveyancer providing conveyancing services for a client shall, subject to the instructions of that client, provide those services with reasonable expedition.

(2) Subject to regulation 22(c), an independent qualified conveyancer providing conveyancing services for a client shall not delay in the completion of a transaction or refuse to complete it on the ground that any fee due to the independent qualified conveyancer in respect of those services remains unpaid.

Undertakings

20. An independent qualified conveyancer providing conveyancing services for a client shall comply promptly with every undertaking given by or on behalf of that independent qualified conveyancer in the course of the provision of those services and, where this is not possible, shall inform the client, and any other person to whom that undertaking has been given, as soon as possible.

Limitation of liability

21. Subject to regulations 8(2) and 27, an independent qualified conveyancer shall not seek to limit or exclude any liability, whether in contract or delict or otherwise, arising out of the provision of conveyancing services by or on behalf of that independent qualified conveyancer.

Withdrawal from transaction

22. An independent qualified conveyancer, having accepted instructions to provide conveyancing services to a client, may refuse to provide (or cease continuing to provide) those services only—

- (a) at his client's written request;
- (b) if he is unable to obtain proper instructions from his client;
- (c) if the client and the independent qualified conveyancer have agreed in writing (whether or not in the terms of engagement letter) that the client is required to pay the total price or any part thereof for the provision of conveyancing services prior to completion of the transaction and the client has failed to pay the price that is due;
- (d) if the transaction concerns matters outwith his knowledge or professional competence;
- (e) if he is unable to provide adequate professional service;
- (f) if there is a conflict of interest whereby, under these Regulations, he is required to cease to provide those services;
- (g) if the transaction is unlawful in any respect;
- (h) if his estate is sequestrated;
- (i) if for any other reasonable cause it is necessary or desirable that he should not, or should no longer, provide those services;

- (j) if regulation 14 or, as the case may be, regulation 15 applies.

Clients' papers

23. An independent qualified conveyancer, having ceased to provide conveyancing services for a client (whether because the transaction is completed or otherwise), shall hold to the order of the client all papers to which the client is entitled.

PART V

ACCOUNTS AND RECORDS

Client accounts

24.—(1) An independent qualified conveyancer shall at all times keep clients' money separate from other money and ensure that clients' money is available for payment to clients on demand or upon such conditions as the client may authorise.

(2) An independent qualified conveyancer shall pay clients' money promptly upon receipt into a client account for the particular client concerned.

(3) A client account is an interest earning account with a bank or a building society.

(4) A client account shall include in its title the word “client” and the name of the particular client concerned, except that where the clients' money belongs too an executry or a trust, of which the client or the independent qualified conveyancer is an executor or trustee, the client account shall include in its title in the names of the executors or trustees and the word “executry” or “trust”, as the case may be.

(5) When opening a client account, an independent qualified conveyancer shall give written notice to the bank or building society concerned that the account is a client account and that therefore all money from time to time standing to the credit of that account belongs to the client and not to the independent qualified conveyancer.

(6) An independent qualified conveyancer shall account to the client for all interest earned on the client account for that client.

(7) An independent qualified conveyancer shall ensure that the rate of interest earned on clients' money in a client account is the best rate of interest reasonably obtained at the bank or building society holding the client account having regard to the amount of money involved and upon the basis that the money is withdrawable upon demand and without loss of interest.

(8) No charge shall be made by an independent qualified conveyancer for opening or maintaining a client account.

(9) An independent qualified conveyancer who fails to comply with any of the duties in this regulation or in regulation 25 shall be liable to compensate any client for any loss of clients' money or of interest resulting from that failure.

Operating client accounts

25.—(1) Subject to paragraph (2) an independent qualified conveyancer shall credit a client account only with clients' money and shall, immediately upon discovery, withdraw from it any other money.

(2) Where an independent qualified conveyancer receives a cheque or a banker's draft that includes clients' money as well as other money, the independent qualified conveyancer shall—

- (a) credit the appropriate client account with the full amount of the cheque or draft; and

- (b) as soon as reasonably practicable thereafter, withdraw from that account a sum equal to the amount of the cheque or draft that did not represent clients' money.
- (3) Subject to paragraph (2), an independent qualified conveyancer may withdraw by cheque or transfer clients' money from a client account only—
 - (a) with the written consent of that client; or
 - (b) in payment of that independent qualified conveyancer's fees for providing conveyancing services to that client provided that—
 - (i) an itemised bill has been delivered to the client; and
 - (ii) the client, having been informed in writing that the money is to be withdrawn or transferred for this purpose, has made no objection within a reasonable time of being so informed.
- (4) An independent qualified conveyancer shall not cause or permit any client account to become overdrawn and, in the event of a client account becoming overdrawn, shall immediately upon discovery take all such proper steps as are necessary to clear the overdraft.
- (5) Where the money has been withdrawn from a client account wrongfully, an independent qualified conveyancer shall immediately upon discovery credit the account with the amount of the withdrawal, together with any interest due thereon in terms of regulation 24(9).

Keeping records

26.—(1) An independent qualified conveyancer shall, at all times, in connection with the provision of conveyancing services by that independent qualified conveyancer, keep such accounts as may be necessary—

- (a) to show all the dealings of that independent qualified conveyancer with clients' money or with other money handled by that independent qualified conveyancer;
- (b) to show separately in respect of each client all clients' money or other money handled by that independent qualified conveyancer; and
- (c) to distinguish all clients' money from other money including money belonging to that independent qualified conveyancer,

and shall keep such accounts at all times up to date.

- (2) Where an independent qualified conveyancer—
 - (a) withdraws from a client account any money in accordance with regulation 25(1); or
 - (b) credits a client account in accordance with regulation 25(5),

the independent qualified conveyancer shall record the reason for the withdrawal or (as the case may be) the credit.

(3) An independent qualified conveyancer shall record all his dealings with clients' money in such of the following forms as may be appropriate—

- (a) a clients' cash book (or a clients' column of a cash book);
- (b) a clients' ledger (or a clients' column of a ledger); and
- (c) a record of sums transferred from the ledger account of one client to that of another,

and no other dealings shall be recorded in such clients' cash book, ledger or columns.

(4) An independent qualified conveyancer shall keep a record of all bills rendered to clients in respect of the provision of conveyancing services, which shall list each bill separately and to specify in each case the name of the client and the date of the bill.

(5) An independent qualified conveyancer shall keep a record listing all powers of attorney which have been granted in his favour together with details of the dates on which the powers of attorney were granted.

(6) At least once every month, an independent qualified conveyancer shall reconcile the balance of the clients' cash book (or clients' column of the cash book) with the balances shown on the client account statements produced by the relevant bank or building society, and shall keep in the cash book or other appropriate place a reconciliation statement showing that this has been done.

(7) The accounts, books, ledgers and records required for the purposes of this regulation need not be kept in documentary form but, where those accounts, books, ledgers and records are kept by means of a computer or in other non documentary form, the independent qualified conveyancer shall ensure that the information comprised in those accounts, books, ledgers and records can readily be produced in a form in which it can be taken away and in which it is visible and legible.

(8) A record required for the purposes of this regulation shall be preserved by the independent qualified conveyancer for at least 10 years from the date of the last entry in it.

Bridging loans

27. An independent qualified conveyancer shall not enter into or maintain any contract or arrangement with a bank or other lender in terms of which the independent qualified conveyancer may draw down loan or overdraft facilities in his name for behoof of clients unless—

- (a) the independent qualified conveyancer shall in every case before drawing down any sums in terms of such contract or arrangement have intimated to the bank or other lender—
 - (i) the name and present address of the client for whom the loan or overdraft facilities are required; and
 - (ii) the arrangements for repayment of the loan or overdraft facilities; and
- (b) the contract or arrangement does not impose personal liability for repayment of any such loan or overdraft facilities on the independent qualified conveyancer.

Money laundering

28.—(1) Every independent qualified conveyancer shall in respect of all other business carried on by the independent qualified conveyancer comply with the provisions of the Money Laundering Regulations 1993(12) as if such other business constituted relevant financial business within the meaning of those Regulations, but as if—

- (a) for the figure “1” where it appears in the second line of regulation 7(1) of those Regulations, there were substituted the figure “2”; and
- (b) regulation 12(4)(a) of those Regulations was deleted.

(2) For the avoidance of doubt, paragraph (1) is without prejudice to the application of the Money Laundering Regulations 1993 to relevant financial business.

Borrowing from clients

29. An independent qualified conveyancer shall not borrow money from his client unless his client is in the business of lending money or his client has been independently advised in regard to the making of the loan.

(12) S.I. 1993/1933.

Audit requirement

30.—(1) An independent qualified conveyancer who, in the course of providing conveyancing services as an independent qualified conveyancer, has handled clients' money during his accounting period, shall arrange for an accountant to—

- (a) inspect all accounts, books and other records required under these Regulations to be kept during that accounting period;
- (b) send to the Board, within 6 months of the end of that accounting period, a report on the extent to which that independent qualified conveyancer has
 - (i) during that accounting period, complied with the requirements of the regulations in this Part;
 - (ii) during that accounting period, maintained adequate arrangements to enable the independent qualified conveyancer so to comply; and
 - (iii) provided the accountant with all information and explanations which are, to the best of the accountant's knowledge and belief, necessary for the purpose of making a report; and
- (c) send to the Board a list of all powers of attorney in the independent qualified conveyancer's favour which are held or granted during that accounting period.

(2) An independent qualified conveyancer shall make available for inspection by the Board, at such times and places as may be specified by the Board, and in any event every three years, any accounts, books and other records which he is required to keep under these Regulations.

(3) For the purposes of this regulation—

“accountant” means a person who is qualified to be appointed as an auditor under paragraph 13(2) of Schedule 1 to the Act; and

“accounting period” means—

- (a) a period of not less than 6 months and not more than 18 months, beginning with the date on which the independent qualified conveyancer's name has been annotated on the register under section 17(7); and
- (b) any successive periods of not more than 12 months beginning immediately after the end of the previous accounting period.

PART VI

FURTHER TRAINING AND STUDY

Further Training and Study

31.—(1) In order to maintain appropriate standards of conduct and practice, an independent qualified conveyancer shall undertake relevant further training and study to develop his professional knowledge, skills and abilities including in particular, education and study in specific areas and topics, management skills and organisation, communication and client care skills, other areas relevant to the independent qualified conveyancers practice and any area designed to develop his ability to operate effectively as an independent qualified conveyancer.

(2) The amount and nature of the relevant further training and study required by an independent qualified conveyancer in each practice year shall be determined in accordance with regulations 32 and 33 respectively.

(3) An independent qualified conveyancer shall, within a period not exceeding 1 year from the date on which his name has been annotated on the register under section 17(7), attend a course on professional ethics and practice management provided by the Board.

(4) An independent qualified conveyancer attending a course required by paragraph (3) above may include such training as part of his further training and study requirement for the practice year in which he attended the course.

(5) For the purposes of this regulation and regulations 32 to 34—

“practice year” means a year beginning on the first day of April and ending on the 31st day of the following March;

“private study” means study undertaken by less than three persons together including without prejudice to the foregoing generality, distance learning by audio, visual, or correspondence courses, television and radio courses, and computer-based learning, the reading of relevant periodicals and books and writing relevant books or articles in periodicals or text books which are published;

“group study” means study in a group of three or more people which lasts for a minimum of half an hour and includes without prejudice to the foregoing generality, discussion groups, tutorials, study meetings of special interest groups, workshops, seminars or courses whether provided in-house or by independent qualified conveyancer firms, groups of firms, the Board or any other provider;

“management skills” includes, without prejudice to its generality, training in professional ethics, financial and business management, budget control, computer skills, foreign languages, interview techniques, setting priorities and time management.

Amount of further training and study

32.—(1) Subject to paragraphs (2) and (3), for every 150 hours which an independent qualified conveyancer works in a practice year, he shall be required to undertake an hour of further training and study in that year.

(2) No independent qualified conveyancer shall be required to undertake more than 20 hours of further training and study in any practice year.

(3) The requirement in paragraph (1) shall not apply to any independent qualified conveyancer—

- (a) who works for 150 hours or less in a practice year; or
- (b) whose name has been annotated on the register under section 17(7) during the practice year; or
- (c) who has been removed from the register or whose annotation has been removed during the practice year.

Nature of further training and study

33.—(1) Subject to paragraphs (2), (3) and (4), the further training and study which an independent qualified conveyancer is required to undertake in a practice year shall be comprised of group study and private study.

(2) A minimum of three quarters of the amount of further training and study which an independent qualified conveyancer is required to undertake in a practice year shall be comprised of group study.

(3) A minimum of one quarter of any group study which is required to be undertaken by an independent qualified conveyancer in any practice year shall be comprised of management skills.

(4) An independent qualified conveyancer, who gives relevant further training and study to other independent qualified conveyancer or qualified persons may include as part of the group study which he requires to undertake in any practice year–

- (a) the time spent giving the further training and study; and
- (b) the time spent preparing for giving such further training and study, up to a maximum of 4 hours.

Monitoring of further training and study

34.—(1) An independent qualified conveyancer shall keep a record showing all the further training and study which he has undertaken in a practice year.

(2) An independent qualified conveyancer shall send to the Board, within one month after the end of each practice year, a copy of his record card for that practice year.

PART VII

MISCELLANEOUS

Complaints

35.—(1) An independent qualified conveyancer shall consider any complaint made to him in writing by a client or any other person having an interest (“the complainant”) in connection with the conveyancing services he has provided.

(2) An independent qualified conveyancer shall, within a reasonable period of time after receipt of any complaint, write to the complainant–

- (a) setting out his findings with regard to the subject matter of the complaint and what action, if any, he proposes to take in the matter; and
- (b) informing the complainant that he may make his complaint to the Board.

(3) Where, following a complaint made to them, the Board are not satisfied as mentioned in section 20(1) but have recommended that the independent qualified conveyancer should take certain steps, the independent qualified conveyancer shall have regard to those recommendations and shall, within a period of one month beginning with the date on which the recommendations were sent to him, notify the Board and the complainant of the action which he has taken, or proposes to take, to comply with the recommendation or in consequence of further consideration of the matter by him.

Satisfaction of claims

36. An independent qualified conveyancer shall at all times–

- (a) maintain adequate arrangements (whether by means of insurance policies or otherwise) for the satisfaction of any successful claims against him arising out of the provision by him of conveyancing services; or
- (b) participate in the arrangements made by the Board for that purpose under section 17(13) (b).

St Andrew's House,
Edinburgh
10th February 1997

James Douglas-Hamilton
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Secretary of State under section 17(11) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

These Regulations make provision with a view to maintaining appropriate standards of conduct and practice of independent qualified conveyancers who are registered as such with the Scottish Conveyancing and Executry Services Board. In particular, the Regulations make provision with respect to—

- (a) the general standards of conduct of independent qualified conveyancers (regulations 3-8);
- (b) conflicts of interest (regulations 9-11);
- (c) conduct of conveyancing transactions (regulations 12-23);
- (d) client accounts and records (regulations 24-30); and
- (e) further training and study (regulation 31-34);
- (f) miscellaneous matters such as complaints and satisfaction of claims (regulations 35-36).