



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART I

#### ORGANISATION

##### *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 [<sup>F1</sup>and sections 16 to 23 of the 1990 Act].

#### Textual Amendments

- F1** Words in s. 3(2) inserted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. **12(b)**, 21(2)(3); S.S.I. 2003/384, art. 2

### [<sup>F2</sup>3A Discharge of functions of Council of the Law Society

- (1) The Council may arrange for any of their functions (other than excepted functions) to be discharged on their behalf by—
  - (a) a committee of the Council;
  - (b) a sub-committee of such a committee; or
  - (c) an individual (whether or not a member of the Society’s staff).
- (2) Where, under subsection (1)(a), the Council have arranged for any of their functions to be discharged by a committee, the committee may, with the approval of the Council, arrange for that function to be discharged on behalf of the Council by—

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- (a) a sub-committee of the committee; or
  - (b) an individual (whether or not a member of the Society's staff).
- (3) Where, under subsection (1) or (2), the Council or a committee have arranged for any of the Council's functions to be discharged by a sub-committee, the sub-committee may, with the approval of the Council, arrange for that function to be discharged on behalf of the Council by a member of the Society's staff.
- (4) A power given by subsection (1), (2) or (3) may be exercised so as to impose restrictions or conditions on the body or person by whom the function concerned is to be discharged.
- (5) Any arrangement made under this section shall not arrange for any of the following functions of the Council to be discharged by an individual—
- (a) <sup>F3</sup> . . . . .
  - <sup>F4</sup>(aa) <sup>F3</sup> [ that under section 47(2) of the 2007 Act of determining what action to propose, or take, as respects a conduct complaint remitted to them under section 6(a) or 15(5)(a) of that Act;
  - (ab) that under—
    - (i) section 42ZA(1) or (2) of this Act or section 20ZB(1) or (2) of the 1990 Act of determining whether or not to uphold a conduct complaint so remitted which suggests unsatisfactory professional conduct;
    - (ii) section 42ZA(3)(b) of this Act or section 20ZB(3)(b) of the 1990 Act of determining what steps to take when upholding such a conduct complaint;
  - (ac) that under section 51(1) of this Act of determining whether or not to make a complaint to the Tribunal as respects a conduct complaint so remitted which suggests professional misconduct;
  - (ad) <sup>F3</sup> . . . . . ]
  - (b) [<sup>F5</sup>that] under section 20(1) or (2) of the 1990 Act <sup>F6</sup>. . . of determining—
    - [<sup>F7</sup>(i) whether paragraph (a) or (d) of the said section 20(1) applies to the practitioner;]
    - (ii) what action to take in the matter.
- (6) An arrangement made under this section may identify an individual by name or by reference to an office or post which the individual holds.
- (7) An arrangement under this section for the discharge of any of the functions of the Council may extend to any of the functions of the Society which is exercisable by the Council.
- (8) Where any arrangement is made under this section for the discharge of any of the functions of the Council by a body or person, the function shall be exercised by that body or person in the name of the Council, except that, where the function in question is a function of the Society which is exercisable by the Council, it shall be exercised in the name of the Society.
- (9) Any arrangement under this section for the discharge of any of the functions of the Council—
- (a) does not affect the responsibility of the Council for the exercise of the function or any liability arising therefrom;
  - (b) does not prevent the Council from exercising the function; and

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- (c) may be revoked at any time by the Council and also, in the case of any arrangement made under subsection (2) or (3), by the committee or sub-committee which made that arrangement.
- (10) In this section, “excepted functions” means—
- (a) any function of the Council to make rules or regulations under this Act or any other enactment; and
  - (b) any function of the Council under paragraph 2 of Schedule 1 to prepare a scheme (scheme for the constitution of the Council etc. ).
- (11) This section<sup>F8</sup> is—
- (a) subject to sections 3B to 3G, and
  - (b) without prejudice to any other power which the Council may have to arrange for the discharge of their functions.
- (12) During any period before—
- (a) paragraph 14(6)(a) of schedule 4 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) comes into force, subsection (5) applies as if paragraph (b) and the word “and” that precedes it were omitted;
  - (b) section 12(c) of that Act comes into force, subsection (5)(a) applies as if for the words “the 1990 Act” there were substituted the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (“the 1990 Act”). ]

#### Textual Amendments

- F2** S. 3A inserted (1.6.2003) by [Council of the Law Society of Scotland Act 2003 \(asp 14\)](#), **ss. 1, 3**
- F3** S. 3A(5)(a)(ad) repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), **ss. 195, 210, 211, Sch. 20 para. 1(2), Sch. 23** (with **ss. 29, 192, 193**); S.I. 2008/1436, **art. 3**
- F4** Words in s. 3A(5) substituted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 81, 82**, {Sch. 5 para. 1(2)(a)(ii)} (with s. 77); S.S.I. 2008/311, **art. 2**
- F5** Word in s. 3A(5)(b) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 81, 82, Sch. 5 para. 1(2)(b)(i)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F6** Words in s. 3A(5)(b) repealed (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 81, 82, Sch. 5 para. 1(2)(b)(ii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F7** S. 3A(5)(b)(i) substituted (23.3.2011) by [The Legal Profession and Legal Aid \(Scotland\) Act 2007 \(Modification and Consequential Provisions\) Order 2011 \(S.S.I. 2011/235\)](#), **arts. 2(1), 3(2)**
- F8** Words in s. 3A(11) substituted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 133(1), 150(2)**; S.S.I. 2011/180, **art. 3, 5(d), Sch.**

#### <sup>F9</sup>3B Regulatory committee

- (1) The Council must, for the purpose mentioned in subsection (2)—
- (a) arrange under section 3A(1)(a) for their regulatory functions to be exercised on their behalf by a regulatory committee, and
  - (b) ensure that the committee continues so to exercise those functions (in particular, for the discharge of the Council's responsibility as mentioned in section 3A(9)(a)).
- (2) The purpose is of ensuring that the Council's regulatory functions are exercised—
- (a) independently of any other person or interest,

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- (b) properly in other respects (in particular, with a view to achieving public confidence).
- (3) Accordingly, the Council must not—
  - (a) exercise their regulatory functions through any other means, or
  - (b) interfere unduly in the regulatory committee's business.
- (4) Subsection (3)(a) is subject to—
  - (a) any determination made by the regulatory committee in a particular case that it is necessary, for ensuring that something falling within the Council's regulatory functions is achieved appropriately, that specific action be taken otherwise than through the regulatory committee, and
  - (b) such directions as the regulatory committee gives the Council (acting in any other capacity) in connection with the determination.

#### Textual Amendments

**F9** Ss. 3B-3G inserted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by Legal Services (Scotland) Act 2010 (asp 16), ss. 133(2), 150(2); S.S.I. 2011/180, arts. 3, 5(d), sch.

### 3C Particular rules applying

- (1) The following particular rules apply as respects the regulatory committee—
  - (a) the committee's membership may include persons who are not members of the Council,
  - (b) at least 50% of the committee's membership is to comprise lay persons,
  - (c) lay persons, where they are not members of the Council, are appointable to the committee if they would be appointable to the Council as non-solicitor members (see paragraph 3A(3) of Schedule 1),
  - (d) the committee is to appoint one of its lay members as its convener,
  - (e) if the convener is not present at a meeting of the committee, another of its lay members is to chair the meeting.
- (2) Any sub-committee of the regulatory committee (formed under section 3A(2)(a)) is subject to the particular rules applying as respects the regulatory committee, except that—
  - (a) a meeting of the sub-committee need not be chaired by one of its lay members,
  - (b) it may co-opt members from outside the membership of the regulatory committee.
- (3) Nothing done by the regulatory committee (or a sub-committee of it) is invalid solely because of a temporary shortfall in the number of its lay members.
- (4) In subsection (1)(b), “lay persons” are persons who are not—
  - (a) solicitors,
  - (b) advocates,
  - (c) conveyancing or executry practitioners as defined in section 23 of the 1990 Act,
  - (d) those having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act, or

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- (e) confirmation agents or will writers within the meaning of Part 3 of the 2010 Act.

#### Textual Amendments

**F9** Ss. 3B-3G inserted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by Legal Services (Scotland) Act 2010 (asp 16), ss. 133(2), 150(2); S.S.I. 2011/180, arts. 3, 5(d), sch.

### 3D Resolving regulatory disputes

- (1) This section applies in relation to any dispute arising between the regulatory committee and the Council (acting in any other capacity) with respect to the application of section 3B.
- (2) If the dispute cannot be settled by the parties, it is to be submitted to (and resolved by) arbitration.
- (3) The arbitrator is to be appointed—
  - (a) jointly by the parties, or
  - (b) in the absence of agreement for joint appointment, by the Lord President on a request made by either (or both) of them.
- (4) The arbitrator's resolution of the dispute is final and binding on the parties.

#### Textual Amendments

**F9** Ss. 3B-3G inserted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by Legal Services (Scotland) Act 2010 (asp 16), ss. 133(2), 150(2); S.S.I. 2011/180, arts. 3, 5(d), sch.

### 3E Further provision for section 3B etc.

- (1) The Scottish Ministers may by regulations—
  - (a) prescribe a maximum—
    - (i) number of members that the regulatory committee, or any sub-committee of it, may have,
    - (ii) proportion of the membership (of either) that may comprise co-opted members,
  - (b) make further provision about the Council's regulatory functions if they believe that such provision is necessary for ensuring that those functions are exercised in accordance with the purpose stated in section 3B(2),
  - (c) modify (by elaboration or exception) the definition in sections 3F and 3G if they believe that such modification is appropriate.
- (2) Before making regulations under subsection (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 subsection (1) is exercisable by statutory instrument; but—
  - (a) a statutory instrument containing regulations under subsection (1)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament,

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- (b) a statutory instrument containing regulations under subsection (1)(b) or (c) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

#### Textual Amendments

**F9** Ss. 3B-3G inserted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by Legal Services (Scotland) Act 2010 (asp 16), ss. 133(2), 150(2); S.S.I. 2011/180, arts. 3, 5(d), sch.

### 3F Meaning of “regulatory functions”

- (1) For the purposes of sections 3B to 3E, the Council's “regulatory functions” are their functions of regulating in respect of any matter the professional practice, conduct and discipline of—
- (a) solicitors (including firms of solicitors) and incorporated practices,
  - (b) other legal practitioners, for example—
    - (i) registered European or foreign lawyers,
    - (ii) conveyancing or executry practitioners.
- (2) Those functions include (in particular) their functions as to—
- (a) setting standards of qualification, education and training,
  - (b) admission of persons to the profession,
  - (c) keeping the roll and other registers,
  - (d) administering the Guarantee Fund,
  - (e) making regulatory rules under any relevant enactment.
- (3) In subsection (1)(b)(ii), the reference to conveyancing or executry practitioners is to be construed in accordance with section 23 of the 1990 Act.

#### Textual Amendments

**F9** Ss. 3B-3G inserted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by Legal Services (Scotland) Act 2010 (asp 16), ss. 133(2), 150(2); S.S.I. 2011/180, arts. 3, 5(d), sch.

### 3G Extended meaning under section 3F

If the Society acts as an approved regulator as mentioned in section 1A, the Council's “regulatory functions” for the purposes of sections 3B to 3E also comprise such regulatory functions as—

- (a) fall within the meaning of that expression as given for the purposes of Part 2 of the 2010 Act (by section 30(1) of that Act), and
- (b) are exercisable under that Part of that Act by the Society in its capacity as an approved regulator as so mentioned.]

#### Textual Amendments

**F9** Ss. 3B-3G inserted (1.4.2011 for specified purposes, 1.6.2011 in so far as not already in force) by Legal Services (Scotland) Act 2010 (asp 16), ss. 133(2), 150(2); S.S.I. 2011/180, arts. 3, 5(d), sch.

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