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Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART II

RIGHT TO PRACTISE AS A SOLICITOR

Practising Certificates

13 Applications for practising certificates.

- (1) Subject to this section and sections 14 to 24, the Council may make rules with respect to—
 - (a) applications for practising certificates;
 - (b) the issue of practising certificates;
 - (c) the keeping of a register of applications for and the issue of practising certificates.
- (2) Any person may inspect the register during office hours without payment.
- (3) The making of a false statement by a solicitor in an application for a practising certificate may be treated as professional misconduct by him for the purposes of Part IV, unless he proves the statement was made without intention to deceive.

14 Issue of practising certificate.

- (1) The Council shall issue to an enrolled solicitor on application being duly made by him, a practising certificate in accordance with rules made by them under section 13.
- (2) The Council shall not issue a practising certificate to a solicitor while he is suspended from practice.

15 Discretion of Council in special cases.

- (1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a

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practising certificate, notice of his intention to do so; and the Council may in their discretion—

- (a) grant or refuse the application, or
- (b) decide to issue a certificate to the applicant subject to such conditions as the Council may think fit.

(2) Subject to subsections (3) and (4), this section shall have effect in any case where a solicitor applies for a practising certificate

- (a) F1
- (b) not having held a practising certificate in force within the period of 12 months following the date of his admission; or
- (c) when a period of 12 months or more has elapsed since he held a practising certificate in force; or
- (d) without having paid in full any fine imposed on him under Part IV; or
- (e) without having paid in full any expenses for which he has been found liable under section 38 or Part IV; or
- (f) when, having been suspended from practice, the period of suspension has expired; or
- (g) when, having had his name struck off the roll, his name has been restored to the roll; or
- (h) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or
- (i) when, after a complaint has been made—
 - (i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply which would enable the Council to dispose of the matter; or
 - (ii) of delay in the disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so,
 and in either case has been notified in writing by the Council accordingly [F2; or
- (j) while any thing required to be done by him by a direction of the Council under section 42A or of the Tribunal under section 53A (including any such direction as confirmed or varied on appeal) remains undone.]

(3) Where a practising certificate free of conditions is issued by the Council under subsection (1) to a solicitor in relation to whom this section has effect by reason of any such circumstances as are mentioned in paragraphs (b), (c), (f), (g) or (h) of subsection (2), this section shall not thereafter have effect in relation to that solicitor by reason of those circumstances.

(4) Where the Council decide to issue a practising certificate subject to conditions, they may, if they think fit, postpone the issue of the certificate pending the hearing and determination of an appeal under section 16.

Textual Amendments

- F1 S. 15(2)(a) repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2, 36:1), s. 56, Sch. 1 Pt. II para. 3, Sch. 4

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F2 S. 15(2)(j) and “; or” immediately preceding it inserted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), [Sch. 1 para. 5](#)

16 Appeals from decisions of Council.

- (1) Where an application for a practising certificate is duly made to the Council otherwise than in a case where
 - [^{F3}(a)] section 15 has effect and the Council refuse or neglect to issue a practising certificate, the applicant [^{F4};
 - (b) the Council refuse to recognise a body corporate as being suitable in terms of section 34(1A)(b), the body corporate]may apply to the Court, who may make such order in the matter as it thinks fit.
- (2) Where the Council in exercise of the power conferred on them by section 15, refuse to issue a practising certificate, or issue a practising certificate subject to conditions, the applicant may appeal to the Court against that decision within 14 days of being notified of it.
- (3) On an appeal to the Court under subsection (2) the Court may—
 - (a) affirm the decision of the Council, or
 - (b) direct the Council to issue a practising certificate to the applicant subject to such conditions if any as the Court may think fit; or
 - (c) make such other order as it thinks fit.

Textual Amendments

- F3** “(a)” inserted by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 1(a)
- F4** [S. 16\(1\)\(b\)](#) inserted by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 1(b)

17 Date and expiry of practising certificates.

- (1) Every practising certificate issued in November of any year shall bear the date of 1st November in that year, and every other practising certificate shall bear the date of the day on which it was issued.
- (2) Every practising certificate shall have effect from the date it bears under subsection (1).
- (3) Subject to subsection (4), every practising certificate shall expire on 31st October next after it is issued.
- (4) On the name of any solicitor being struck off the roll or on a solicitor being suspended from practice as a solicitor, any practising certificate for the time being in force of that solicitor shall cease to have effect, but in the case of suspension, if he ceases to be so suspended during the period for which the practising certificate would otherwise have continued in force, the certificate shall thereupon again have effect.

18 Suspension of practising certificates.

- (1) If—

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- (a) in pursuance of the [^{F5M1}Mental Health (Scotland) Act 1984], a solicitor is, by reason of mental disorder, admitted to a hospital and becomes liable to be detained there or becomes subject to guardianship;
 - (b) *acurator bonis* appointed on the estate of a solicitor;
 - (c) the estate of the solicitor is sequestrated;
 - (d) a solicitor grants a trust deed for behoof of creditors;
 - (e) a judicial factor is appointed on the estate of the solicitor under section 41;
- any practising certificate for the time being in force of that solicitor shall cease to have effect, and he shall be suspended from practice as a solicitor.

[^{F6}(1A) If—

- (a) an administration or winding up order, or an appointment of a provisional liquidator, liquidator, receiver or judicial factor has been made in relation to the incorporated practice; or
- (b) a resolution has been passed for the voluntary winding-up of an incorporated practice (other than a resolution passed solely for the purpose of reconstruction or amalgamation of the incorporated practice with another incorporated practice),

the recognition under section 34(1A) of the incorporated practice shall be thereby revoked.]

- (2) On the occurrence of any of the circumstances mentioned in . . . ^{F7} subsection (1), the solicitor in question shall intimate those circumstances to the Council in writing immediately.
- (3) On the occurrence of the circumstances mentioned in paragraphs (d) or (e) of subsection (1) the trustee or as the case may be the judicial factor shall intimate his appointment to the Council in writing immediately.

[^{F8}(3A) On the occurrence of the circumstances mentioned in—

- (a) paragraph (a) of subsection (1A), the administrator, provisional liquidator, liquidator, receiver or, as the case may be, judicial factor appointed in relation to the incorporated practice;
- (b) paragraph (b) of subsection (1A), the incorporated practice shall immediately intimate that fact to the Council.]

Textual Amendments

- F5** Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 46**
- F6** S. 18(1A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 2(a)**
- F7** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**
- F8** S. 18(3A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 2(b)**

Marginal Citations

- M1** 1984 c. 36.

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19 Further provisions relating to suspension of practising certificates.

- (1) The provisions of this section have effect in relation to a practising certificate which has ceased to have effect by virtue of section 18 during the period when that certificate would, but for that section, have continued in force.
- (2) ^{F9}
- (4) A practising certificate which has ceased to have effect by virtue of paragraphs (c) or (d) of section 18(1) shall again have effect on the solicitor being granted his discharge.
- (5) A practising certificate which has ceased to have effect by virtue of paragraph (e) of section 18(1) shall again have effect on the judicial factor being granted his discharge.
- [^{F10}(5A) Where a solicitor is suspended from practice as a solicitor by virtue of paragraph (a) or (b) of section 18(1), the period of suspension shall, for the purposes of section 15(2) (f), expire on the solicitor ceasing to be liable to be detained or subject to guardianship or, as the case may be, on the *curator bonis* being discharged.]
- (6) Where a solicitor is suspended from practice as a solicitor by virtue of paragraphs (c), (d) or (e) of section 18(1), he may at any time apply to the Council to terminate the suspension.
- (7) On an application under subsection (6), the Council may either—
 - (a) grant the application with or without conditions; or
 - (b) refuse the application
- (8) If on an application by a solicitor under subsection (6), the Council refuse the application or grant it subject to conditions, the solicitor may appeal against the decision to the Court, who may—
 - (a) affirm the decision; or
 - (b) vary any conditions imposed by the Council; or
 - (c) terminate the suspension either with or without conditions.

Textual Amendments

F9 S. 19(2)(3) repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**

F10 S. 19(5A) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 6**

20 Council's duty to supply lists of solicitors holding practising certificates.

- (1) The Council shall send a list of all solicitors holding practising certificates for the practice year then current—
 - (a) to the Keeper of the Registers of Scotland; [^{F11}and]
 - [^{F12}(ab) to the Principal Clerk of Session;]
 - (b) to each sheriff clerk;as soon as practicable after 1st December in each year.
- [^{F13X1}(2) The Council shall send a list of all such solicitors carrying on business in Edinburgh to the Principal Clerk of Session as soon as practicable after 1st December in each year.]
- [^{F13X1}(2) The Council shall send a list of all solicitors who have rights of audience in—
 - (a) the Court of Session, to—

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- (i) the Principal Clerk of Session;
 - (ii) the Principal Clerk of the Judicial Office of the House of Lords; and
 - (iii) the Registrar to the Judicial Committee of the Privy Council;
- and
- (b) the High Court of Justiciary, to the Principal Clerk of Justiciary,
- as soon as practicable after 1st December in each year; and where, by virtue of an order under section 53(2)(ba), 53A(2)(ba) or 55(1)(ba), a solicitor’s right of audience in any of those courts is suspended or revoked, the Council shall forthwith inform the persons mentioned in this subsection of that fact.]
- (3) The Council shall notify those persons to whom they have sent lists under this section of any changes in those lists.

Editorial Information

- X1** S. 20(2) beginning “The Council shall send a list of all solicitors who have rights of audience” substituted (*prosp.*) for s. 20(2) beginning “The Council shall send a list of all such solicitors carrying on business in Edinburgh” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(4)(b)**

Textual Amendments

- F11** Word repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 9**
- F12** S. 20(1)(ab) inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(4)(a)**
- F13** S. 20(2) beginning “The Council shall send a list of all solicitors who have rights of audience” substituted (*prosp.*) for s. 20(2) beginning “The Council shall send a list of all such solicitors carrying on business in Edinburgh” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(4)(b)**

21 Consultants to hold practising certificates.

- (1) A consultant shall be treated for the purposes of this Act as a practising solicitor and the provisions relating to practising certificates and, subject to subsection (2), the Guarantee Fund shall apply to him.
- (2) The Council may if they think fit exempt a consultant from any of the provisions of section 43 or Schedule 3 (the Guarantee Fund).
- (3) In this section “consultant” means any solicitor who
- [^{F14}(a)] not being in partnership with a solicitor or other solicitors causes or permits his name to be associated with the name of that solicitor or those solicitors or their firm’s name,
 - [^{F15}(b)] not being a director of an incorporated practice, causes or permits his name to be associated with that incorporated practice,]
- whether he is described as a consultant or adviser or in any other way.

Textual Amendments

- F14** “(a)” inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 3(a)**

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F15 S. 21(3)(b) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 3(b)**

22 Evidence as to holding of practising certificates.

- (1) Any list purporting to be issued by the Council and to contain the names of solicitors in Scotland who have before 1st December in any year obtained practising certificates for the period of 12 months from 1st November in that year shall, until the contrary is proved, be evidence that the persons named in that list are solicitors holding such certificates.
- (2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as a solicitor under a certificate for the current year, but in the case of any such person an extract from the roll certified as correct by the Council shall be evidence of the facts appearing in the extract.

23 Offence to practise without practising certificate.

- (1) Any person who practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence under this Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.
- (2) Without prejudice to any proceedings under subsection (1), failure on the part of a solicitor in practice to have in force a practising certificate may be treated as professional misconduct for the purposes of Part IV.

VALID FROM 22/05/2000

[^{F16}23A Professional misconduct for registered European lawyer to practise without a registration certificate

Failure on the part of a registered European lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.]

Textual Amendments

F16 S. 23A inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(4)**

VALID FROM 01/10/2004

[^{F17}23B

Failure on the part of a registered foreign lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.]

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Textual Amendments

F17 [S. 23B](#) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations ([S.S.I. 2004/383](#)), {reg. 3}

24 Saving of public officials.

Nothing in this Act shall require a practising certificate to be taken out by a person who is by law authorised to act as a solicitor to a public department without admission, or by any assistant or officer appointed to act under the direction of any such solicitor.

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