



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART III

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

##### *Practice Rules*

#### **34 Rules as to professional practice, conduct and discipline.**

- (1) Subject to subsections (2) and (3), the Council may, if they think fit, make rules for regulating in respect of any matter the professional practice, conduct and discipline of solicitors [<sup>F1</sup>and incorporated practices].

[<sup>F2</sup>(1A) Rules made under this section may—

- (a) provide as to the management and control by—
  - (i) solicitors holding practicing certificates or their executors;
  - (ii) other incorporated practices.of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals and firms practicing as solicitors being bodies the membership of which is restricted to such solicitors, executors and other incorporated practices;
- (b) prescribe the circumstances in which such bodies may be recognised by the Council as being suitable to undertake the provision of any such services;
- (c) prescribe the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised (which bodies, when and for so long as so recognised, are in this Act referred to as “incorporated practices”);
- (d) regulate the conduct of the affairs of incorporated practices; and
- (e) provide—
  - (i) for the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications for recognition under this section

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are to be made, and for the payment of fees in connection with such applications;

- (ii) for regulating the names that may be used by incorporated practices;
- (iii) as to the period for which any recognition granted under this section shall (subject to the provisions of this Act) remain in force;
- (iv) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud;
- (v) for the keeping by the Society of a list containing the names and places of business of all incorporated practices and for the information contained in any such list to be available for inspection;
- (vi) for rules made under any provision of this Act to have effect in relation to incorporated practices with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
- (vii) for empowering the Council to take such steps as they consider necessary or expedient to ascertain whether or not any rules applicable to incorporated practices by virtue of this section are being complied with.]

[<sup>F3</sup>and

- (f) make such additional or different provision as the Council think fit in relation to solicitors who, or incorporated practices which, are partners in or directors of multi-disciplinary practices.]

[<sup>F4</sup>(1B) Rules made under this section may—

- (a) prevent a solicitor from entering a multi-national practice without the approval of the Council; and
- (b) make different provision for the regulation of solicitors and registered foreign lawyers in a multi-national practice in the following different cases—
  - (i) where the principal place of business of the practice is outside Scotland and it has a place of business in Scotland;
  - (ii) where the principal place of business of the practice is in Scotland and it has a place of business outside Scotland;
  - (iii) where the principal place of business of the practice is in Scotland and it has no place of business outside Scotland.

(1C) For the purposes of subsection (1B)(b), the principal place of business of a multi-national practice shall be determined by the Council who shall take into account factors set out in rules which may be made under this section.]

(2) The Council shall, before making any rules under this section or section 35—

- (a) send to each member of the Society a draft of the rules; and
- (b) thereafter submit the draft rules to a meeting of the Society; and
- (c) take into consideration any resolution passed at that meeting relating to amendments to the draft rules.

(3) Rules made under this section or section 35 shall not have effect unless the Lord President after considering any objections he thinks relevant has approved the rules so made.

[<sup>F5</sup>(3A) Without prejudice to subsection (3), any rule made, whether before or after the coming into force of this subsection, by the Council under this section or section 35 which has

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the effect of prohibiting the formation of multi-disciplinary practices shall not have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved it.]

(4) If any solicitor fails to comply with any rule made under this section that failure may be treated as professional misconduct for the purposes of Part IV.

[<sup>F6</sup>(4A) A certificate purporting to be signed by an officer of the Society and stating that any body corporate is or is not an incorporated practice shall, unless the contrary is proved, be sufficient evidence of that fact.

(4B) Subject to the provisions of this Act, the Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, provide for any enactment or instrument passed or made before the commencement of section (1A) above and having effect in relation to solicitors to have effect in relation to incorporated practices with such additions, omissions, or other modifications as appear to him to be necessary or expedient.]

#### Textual Amendments

- F1** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 12(a)**
- F2** S. 34(1A) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 12(b)**
- F3** S. 34(1A)(f) and word “and” immediately preceding it inserted (17.3.1993) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), **s. 31(3)(a)**; S.I. 1993/641, **art. 3**, Sch.
- F4** S. 34(1B)(1C) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 9}
- F5** S. 34(3A) inserted (17.3.1993) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), **s. 31(3)(b)**; S.I. 1993/641, **art. 3**, Sch.
- F6** S. 34(4A)(4B) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 12(c)**

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

- C1** S. 34 modified (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 14}

### Accounts rules

#### 35 Accounts rules.

(1) The Council shall, subject to section 34(2) and (3), make rules (in this Act referred to as “accounts rules”)—

- (a) as to the opening and keeping by solicitors [<sup>F7</sup>and incorporated practices] of accounts and deposits at the banks specified in subsection (2) [<sup>F8</sup>or with a building society] for moneys not belonging to them received by them in the course of their practice;
- (b) as to the opening and keeping by solicitors [<sup>F7</sup>and incorporated practices] of—
- (i) a deposit or share account with a building society. . . <sup>F9</sup>, or
  - (ii) an account showing sums on loan to a local authority,

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being in either case for a client whose name is specified in the title of the account;

- (c) as to the keeping by solicitors [<sup>F7</sup>and incorporated practices] of books and accounts containing particulars and information as to money not belonging to them received, held or paid by them in the course of their practice; . . .<sup>F10</sup>
- (d) as to the action which the Council may take to enable them to ascertain whether or not the rules are being complied with. [<sup>F11</sup>; and
- (e) as to the recovery from solicitors of fees and other costs incurred by the Council in ascertaining whether or not a solicitor who has failed to comply with the accounts rules has remedied that failure and is complying with the rules.]

(2) The banks mentioned in paragraph (a) of subsection (1) are—

- (a) the Bank of England;
- (b) . . .<sup>F12</sup>
- (c) the National Savings Bank;
- <sup>F13</sup>(d) . . . . .
- [<sup>F14</sup>(e) a person (other than a building society) who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- <sup>F14</sup>(ea) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the Financial Services and Markets Act 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;]
- (f) . . . . .<sup>F15</sup>

and the rules may specify the location of the banks' or companies' branches at which the accounts are to be kept.

[<sup>F16</sup>(2A) Paragraphs (e) and (ea) of subsection (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

(3) If any solicitor fails to comply with any rule made under this section that failure may be treated as professional misconduct for the purposes of Part IV.

(4) Rules made under this section shall not apply to a solicitor—

- (a) who is in employment as solicitor to a Minister of the Crown or a Government Department or as an assistant or officer appointed to act under the direction of such solicitor; or
- [<sup>F17</sup>(b) who is in employment to which Part V of the Legal Aid (Scotland) Act 1986 applies;]
- (c) who is in employment in an office connected with the administration of a local authority or a statutory undertaking or a designated body to which he has been appointed by the authority or the statutory undertakers or the persons responsible for the management of that body by reason of his being a solicitor,

so far as regards monies received, held or paid by him in the course of that employment.

In this subsection—

“local authority” means a local authority within the meaning of the <sup>M1</sup>Local Government (Scotland) Act 1973;

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“statutory undertakers” means any persons (including a local authority) authorised by any enactment or statutory order or any scheme made under or confirmed by an enactment to construct, work or carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of gas, electricity, hydraulic power or water;

“designated body” means any body whether corporate or unincorporate for the time being designated by the Council for the purposes of this section.

#### Textual Amendments

- F7** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 13**
- F8** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 9**
- F9** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**
- F10** Word repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. II para. 4(a)**, Sch. 4
- F11** S. 35(1)(e) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. II para. 4(b)**
- F12** S. 33(2)(b) repealed by Trustee Savings Banks Act 1985 (c. 58, SIF 110), ss. 4(3), 7(3), **Sch. 4**
- F13** S. 35(2)(d) repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2**
- F14** S. 35(2)(e)(ea) substituted for s. 35(2)(e) (1.12.2001) by S.I. 2001/3649, **arts. 1, 222(2)**
- F15** S. 35(2)(f) repealed by Banking Act 1987 (c. 22, SIF 10), s. 108(1)(2), Sch. 6 para. 9, **Sch. 7 Pt. I** (in Sch. 7 Pt. I the repeal is expressed to include the word “and” immediately preceding paragraph (f))
- F16** S. 35(2A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 222(3)**
- F17** S. 35(4)(b) substituted by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 43, 45, Sch. 3 para. 7, **Sch. 4 para. 3(1)**

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

- C2** S. 35 modified (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 14}
- C3** S. 35(2) amended (1.1.1993) by 1992/3218, reg. 82(1), Sch. 10 Pt. I para. 11

#### Marginal Citations

- M1** 1973 c. 65.

## 36 Interest on client’s money.

- (1) Accounts rules shall make provision for requiring a solicitor [<sup>F18</sup>or and incorporated practice], in such cases as may be prescribed by the rules, . . . <sup>F19</sup>
- (a) to keep in a separate deposit or savings account at a bank [<sup>F20</sup>or with a building society], or on a separate deposit receipt at a bank, for the benefit of the client money received for or on account of a client; or
- [<sup>F21</sup>(aa) to keep in—
- (i) a deposit or share account with a . . . <sup>F22</sup> building society; or
- (ii) an account showing sums on loan to a local authority,
- being in either case an account kept by the solicitor in his [<sup>F18</sup>or, as the case may be, the incorporated practice in its]own name for a specified client, money so received; or]

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- (b) to make good to the client out of the solicitor's [<sup>F18</sup>or, as the case may be, the incorporated practice's] own money a sum equivalent to the interest which would have accrued if the money so received had been kept as mentioned in paragraph (a) [<sup>F23</sup>or (aa)].
- (2) The cases in which a solicitor [<sup>F24</sup>or incorporated practice] may be required to act as mentioned in subsection (1) may be defined among other things by reference to the amount of any sum received or balance held or the period for which it is or is likely to be retained or held or both; and the rules may include provision for enabling a client (without prejudice to any other remedy) to require that any question arising under the rules in relation to the client's money be referred to and determined by the Society.
- (3) Except as provided by the rules, a solicitor [<sup>F25</sup>or incorporated practice] shall not be liable by virtue of the relation between solicitor and client to account to any client for interest received by the solicitor [<sup>F25</sup>or, as the case may be, the incorporated practice] on monies lodged in an account [<sup>F26</sup>at a bank or with a building society], or on deposit receipt, at a bank, being monies received or held for or on account of his [<sup>F25</sup>or, as the case may be, its] clients generally.
- (4) Nothing in this section or in the rules shall affect any arrangement in writing whenever made between a solicitor and his client [<sup>F27</sup>or an incorporated practice and its client] as to the application of the client's money or interest on it.

#### Textual Amendments

- F18** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 14\(a\)](#)
- F19** Word repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\), s. 25\(a\)\(i\)](#)
- F20** Words inserted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\), s. 6\(1\), Sch. 1 para. 10\(a\)](#)
- F21** [S. 36\(1\)\(aa\)](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\), s. 25\(a\)\(ii\)](#)
- F22** Word repealed by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\), s. 6\(2\), Sch. 2](#)
- F23** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\), s. 25\(a\)\(iii\)](#)
- F24** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 14\(b\)](#)
- F25** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 14\(c\)](#)
- F26** Words inserted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\), s. 6\(1\), Sch. 1 para. 10\(b\)](#)
- F27** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 14\(d\)](#)

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

- C4** [S. 36](#) modified (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 14}

### 37 Accountant's certificates.

- (1) This section shall have effect for the purpose of securing satisfactory evidence of compliance with the accounts rules.

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- (2) Subject to the following provisions of this section, every solicitor [<sup>F28</sup>and incorporated practice] to whom the accounts rules apply shall, in accordance with the rules made under subsection (3), deliver to the Council a certificate by an accountant (in this section referred to as an “accountant’s certificate”).
- (3) The Council shall make rules (in this Act referred to as “accountant’s certificate rules”) prescribing—
  - (a) the qualifications to be held by an accountant by whom an accountant’s certificate may be given;
  - (b) the nature and extent of the examination to be made by an accountant of the books and accounts of a solicitor or his firm [<sup>F29</sup>or of an incorporate practice] and of any other relative documents with a view to the signing of an accountant’s certificate;
  - (c) the intervals at which an accountant’s certificate shall be delivered to the Council, not being more frequent than once in each practice year;
  - (d) the accounting period for which an accountant’s certificate shall be delivered or the different accounting periods for which in different circumstances an accountant’s certificate shall be delivered;
  - (e) the period within which an accountant’s certificate shall be delivered; and
  - (f) the form and content of an accountant’s certificate.
- (4) The accountant’s certificate rules may include such other provisions as the Council consider necessary or proper for the purpose of giving effect to the foregoing provisions of this section and for regulating any incidental, consequential or supplementary matters.
- (5) The delivery of an accountant’s certificate in pursuance of subsection (2) shall not be required in the case of—
  - (a) a solicitor who [<sup>F30</sup>or incorporated practice which], in agreement with the Council, furnishes to the Council and keeps in force a fidelity bond by an insurance office or other institution accepted by the Court as cautioners for a judicial factor appointed by the Court for such amount as the Council may determine, guaranteeing the intromissions of the solicitor or his firm [<sup>F31</sup>or, as the case may be, of the incorporated practice] with money held by him or them [<sup>F30</sup>or, as the case may be, it] for or on behalf of clients; or
  - (b) a solicitor [<sup>F30</sup>or incorporated practice] who satisfies the Council that during the accounting period to which the accountant’s certificate would ordinarily relate he has not in the course of his practice [<sup>F30</sup>or, as the case may be, it has not] held or received any money on behalf of clients.
- (6) If the Council are of the opinion that satisfactory evidence of compliance with the accounts rules for the time being in force will be secured by some method other than by delivery of an accountant’s certificate under subsection (2), they may make rules—
  - (a) prescribing—
    - (i) that other method;
    - (ii) the terms and conditions to be observed in connection therewith; and
    - (iii) the procedure to be followed by solicitors [<sup>F32</sup>or incorporated practices] desiring to adopt that other method, and
  - (b) containing such incidental, consequential and supplementary provisions relative thereto as the Council may consider necessary or proper;

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and a solicitor who satisfies the Council that he [<sup>F32</sup>or, as the case may be, an incorporated practice which satisfies the Council that it] is complying with rules made under this subsection shall not be required to deliver an accountant's certificate in pursuance of subsection (2).

- (7) A certificate under the hand of the secretary of the Society certifying that a specified solicitor [<sup>F33</sup>or incorporated practice] has or has not, as the case may be, delivered to the Council an accountant's certificate, or supplied any evidence required from him [<sup>F33</sup>or, as the case may be, it] under this section or under the accountant's certificate rules or, as the case may be, under any rules made under subsection (6), shall, unless the contrary is proved, be evidence of the fact so certified.
- (8) Failure by a solicitor to comply with any provision of this section or of the accountant's certificate rules or of any rules made under subsection (6), so far as applicable to him, may be treated as professional misconduct for the purposes of Part IV.

#### Textual Amendments

- F28** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 15\(a\)](#)
- F29** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 15\(b\)](#)
- F30** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 15\(c\)](#)
- F31** Words inserted by virtue of [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 15\(c\)](#) (which provided that after the word "firm" there should be substituted the words inserted in the text)
- F32** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 15\(d\)](#)
- F33** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 15\(e\)](#)

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

- C5** [S. 37](#) 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}
- C6** [S. 37](#) modified (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 14}

### *Powers of Council to intervene*

#### 38 Powers where dishonesty alleged.

- (1) If the Council have reasonable cause to believe that a solicitor or an employee of his [<sup>F34</sup>or an incorporated practice or any employee thereof] has been guilty of any such dishonesty as is mentioned in section 43(2) they may—
- (a) require the production or delivery to any person appointed by the Council at a time and place fixed by the Council of the documents to which this section applies;
  - (b) take possession of all such documents; and
  - (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account



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or any sum deposited in the name of such solicitor or his firm [<sup>F34</sup>or, as the case may be, such incorporated practice] without the leave of the Court and the Court may make such order.

- (2) This section applies to the following documents—
- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of such solicitor or his firm [<sup>F35</sup>or, as the case may be, such incorporated practice];
  - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which he is a sole trustee or is a co-trustee only with one or more of his partners or employees [<sup>F35</sup>or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of [<sup>F36</sup>its] employees.]
- (3) Part II of Schedule 3 shall have effect in relation to the powers of the Council under this section.

#### Textual Amendments

**F34** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 16(a)**

**F35** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 16(b)**

**F36** Word substituted by virtue of Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 11**

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

**C7** **S. 38** 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}

### 39 Powers where delay alleged.

- (1) If—
- (a) a complaint is made to the Society that there has been undue delay on the part of a solicitor [<sup>F37</sup>or an incorporated practice] in dealing with any matter in which he or his firm [<sup>F37</sup>or, as the case may be, it] is or has been concerned in a professional capacity, or any matter relating to a trust of which he is or was the sole trustee, or a co-trustee only with one or more of his partners or employees [<sup>F37</sup>or, as the case may be, the incorporated practice or one of its employees was the sole trustee or it was a co-trustee only with one or more of its employees], and
  - (b) the Council are of opinion that the delay ought to be investigated,
- the Council may by notice in writing at any time, and from time to time, require the solicitor [<sup>F37</sup>or, as the case may be, incorporated practice] to give an explanation of the delay.
- (2) Any notice given by the Council under subsection (1) may specify a period, not being less than 21 days, within which they require an explanation to be furnished; and if within that period the solicitor [<sup>F38</sup>or, as the case may be, incorporated practice] does not reply or fails to furnish an explanation which the Council regard as sufficient and satisfactory, and he [<sup>F38</sup>or, as the case may be, it] is so informed in writing, section 38 shall apply in relation to that solicitor and his firm [<sup>F38</sup>or, as the case may be, to that incorporated practice] in so far as it relates to documents or payments connected

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with the matter complained of (but not otherwise) and shall so apply notwithstanding that the Council may not have reasonable cause to believe that the solicitor [<sup>F38</sup>or, as the case may be, incorporated practice] has been guilty of any such dishonesty as is mentioned in section 43(2).

#### Textual Amendments

- F37** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 17(a)**
- F38** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 17(b)**

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

- C8** [S. 39](#) 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}

#### [<sup>F39</sup>39A Powers where excessive fees etc charged.

- (1) This section applies where the Council are satisfied, in the case of any solicitor or incorporated practice, after inquiry and after giving the solicitor or incorporated practice an opportunity of being heard, that the solicitor or incorporated practice has issued an account for professional fees and outlays of an amount which is grossly excessive (whether or not the account has been paid by or on behalf of the client or debited by the solicitor or incorporated practice to the account of any sums held on behalf of the client).
- (2) Where this section applies the Council may—
  - (a) in the case of a solicitor, withdraw his practising certificate; or
  - (b) in the case of an incorporated practice, withdraw the practising certificates of all or any of the solicitors who are directors of the incorporated practice;
 and a certificate so withdrawn shall cease to have effect and the solicitor shall be suspended from practice as a solicitor.
- (3) On being satisfied by the solicitor or, as the case may be, incorporated practice that he or it has complied with the requirements of subsection (4) the Council, unless they are of the opinion that the solicitor or incorporated practice is liable to disciplinary proceedings under Part IV, shall terminate the suspension from practice of the solicitor or solicitors concerned and shall restore to him or them any practising certificates held by him or them for the practice year then current.
- (4) The requirements referred to in subsection (3) are—
  - (a) to submit the account to the Auditor of the Court of Session for taxation together with all documents in the possession or control of the solicitor or incorporated practice which relate to the matters in respect of which the account was issued; and
  - (b) to refund to the client a sum not less than the relevant amount.
- (5) The Council shall be entitled to be represented at a diet for taxation by virtue of subsection (4)(a) and to make representations to the Auditor of Court.
- (6) Where, on taxation of an account by virtue of subsection (4)(a), the amount due in respect of the account as taxed is the amount specified in the account as issued, the

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fee of the Auditor of Court shall be paid by the Council; but in any other case the fee shall be paid by the solicitor or, as the case may be, the incorporated practice.

- (7) In subsection (4)(b) “the relevant amount” is the amount (if any) by which the sum received by the solicitor or incorporated practice in respect of the account exceeds the amount due in respect of the account as taxed.
- (8) A solicitor may, within 21 days of receiving written notice of a decision of the Council under subsection (2) to withdraw his practising certificate, appeal to the Court against that decision; and on any such appeal the Court may give such directions in the matter, including directions as to the expenses of the proceedings before the Court, as it may think fit; and the order of the Court shall be final.
- (9) The withdrawal of a solicitor’s practising certificate under subsection (2) shall be without prejudice to the operation of section 35(3) or section 37(8).]

#### Textual Amendments

**F39** S. 39A inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 4

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

**C9** S. 39A 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}

## 40 Powers where failure to comply with accounts rules etc.

- (1) Where the Council are satisfied, in the case of any solicitor [<sup>F40</sup>or incorporated practice], after enquiry and after giving the solicitor [<sup>F40</sup>or, as the case may be, incorporated practice] an opportunity of being heard, that the solicitor [<sup>F40</sup>or, as the case may be, incorporated practice][<sup>F41</sup>has failed or] is failing to comply with any provisions of—
- (a) section 35 or the accounts rules made under that section, or
  - (b) section 37 or the accountant’s certificate rules or other rules made under that section,
- so far as applicable in his [<sup>F40</sup>or, as the case may be, its] case (in this section referred to as “the applicable provisions”), the Council may, subject to the provisions of this section
- [<sup>F42</sup>(a)] withdraw the practising certificate held by the solicitor [<sup>F43</sup>or, as the case may be—
- (b) withdraw the practising certificate or certificates of any or all of the solicitors who are directors of the incorporated practice,
- and a certificate so withdrawn] shall thereupon cease to have effect and the solicitor shall be suspended from practice as a solicitor.
- (2) On being satisfied by the solicitor that he [<sup>F44</sup>or, as the case may be, by the incorporated practice that it] is able and willing to comply with the applicable provisions, the Council, unless they are of opinion that the solicitor [<sup>F44</sup>or, as the case may be, the incorporated practice] is liable to disciplinary proceedings under Part IV, shall terminate the suspension from practice of the solicitor [<sup>F45</sup>or solicitors concerned and shall restore to him or them any practicing certificate or certificates held by him or them for the practice year then current.]

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- (3) Within 21 days after receiving written notice of a decision of the Council under this section to withdraw his practising certificate, or to refuse to terminate his suspension from practice, the solicitor may appeal to the Court against [F46] decision; and on any such appeal the Court may give such directions in the matter, including directions as to the expenses of the proceedings before the Court, as it may think fit; and the order of the Court shall be final.
- (4) Any withdrawal of a solicitor's practising certificate by the Council in exercise of the power conferred by subsection (1) shall be without prejudice to the operation of section 35(3) or section 37(8).

#### Textual Amendments

- F40** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 18(a)**
- F41** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 12**
- F42** "(a)" inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 18(a)**
- F43** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 18(a)**
- F44** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 18(b)**
- F45** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 18(b)**
- F46** Word substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 18(c)**

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

- C10** S. 40 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}

## 41 Appointment of judicial factor.

Where the Council, in exercise of any power conferred on them by the accounts rules, have caused an investigation to be made of the books, accounts and other documents of a solicitor [F47] or an incorporated practice], and, on consideration of the report of the investigation, the Council are satisfied—

- (a) that the solicitor [F48] or, as the case may be, the incorporated practice] has failed. . . F49 to comply with the provisions of those rules, and
- (b) that, [F50], in the case of a solicitor, in connection with his practice as such], either—
- (i) his liabilities exceed his assets in the business, or
  - (ii) his books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether his liabilities exceed his assets, or
  - (iii) there is reasonable ground for apprehending that a claim on the Guarantee Fund may arise [F51]; or
- (c) that, in the case of an incorporated practice, either—
- (i) its liabilities exceed its assets, or

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- (ii) its books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether its liabilities exceed its assets, or
- (iii) there is reasonable ground for apprehending that a claim on the guarantee fund may arise].

the Council may apply to the Court for the appointment of a judicial factor on the estate of the solicitor [<sup>F52</sup>or, as the case may be, of the incorporated practice]; and the Court, on consideration of the said report and after giving the solicitor [<sup>F53</sup>or, as the case may be, the incorporated practice] an opportunity of being heard, may appoint a judicial factor on [<sup>F54</sup>such] estate, or do otherwise as seems proper to it.

#### Textual Amendments

- F47** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(a)**
- F48** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(b)**
- F49** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1)(2), Sch. 1 para. 13, **Sch. 2**
- F50** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(c)**
- F51** S. 41(e) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(d)**
- F52** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(e)**
- F53** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(f)**
- F54** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(g)**

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

- C11** S. 41 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}

## 42 Distribution of sums in client bank account.

- (1) Subject to the provisions of this section, where, in any of the events mentioned in subsection (2) [<sup>F55</sup>or (2A)], the sum at the credit of any client account kept by a solicitor [<sup>F55</sup>or an incorporated practice] (or where several such accounts are kept by him [<sup>F55</sup>or, as the case may be, by it] the total of the sums at the credit of those accounts) is less than the total of the sums received by him in the course of his practice on behalf of his clients [<sup>F55</sup>or, as the case may be, by it on behalf of its clients] and remaining due by him [<sup>F55</sup>or, as the case may be, by it] to them, then, notwithstanding any rule of law to the contrary, the sum at the credit of the client account (or where several such accounts are kept, the total of the sums at the credit of those accounts) shall be divisible proportionately among the clients of the solicitor [<sup>F55</sup>or, as the case may be, the incorporated practice] according to the respective sums received by him in the course of his practice on their behalf [<sup>F55</sup>or, as the case may be, by it on their behalf] and remaining due by him [<sup>F55</sup>or, as the case may be, by it] to them.
- (2) The events to which subsection (1) applies are in relation to any solicitor—
  - (a) the sequestration of his estate;

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- (b) the granting by him of a trust deed for behoof of creditors;
- (c) the appointment of a judicial factor on his estate.

[<sup>F56</sup>(2A) The events to which subsection (1) applies are in relation to any incorporated practice—

- (a) the making of an administration or winding up order or the appointment of a provisional liquidator, liquidator, receiver or judicial factor; or
- (b) the passing of a resolution for voluntary winding-up (other than one passed solely for the purposes of reconstruction or amalgamation with another incorporated practice)]

(3) Where a solicitor [<sup>F57</sup>or an incorporated practice] keeps an account at a bank in his [<sup>F57</sup>or, as the case may be, its] own name [<sup>F57</sup>or, as the case may be, by the incorporated practice in its own name] for a specified client no regard shall be had for the purposes of this section to the sum at the credit of that account or to any sums received by the solicitor in the course of his practice on behalf of that client [<sup>F57</sup>or, as the case may be, by the incorporated practice on that behalf] and remaining due by him [<sup>F57</sup>or, as the case may be, by it] to that client, so far as these are represented by the sum at the credit of that bank account [<sup>F58</sup>; nor shall any regard be had for such purposes to any—

- (a) deposit or share account with a . . . <sup>F59</sup> building society; or
- (b) account showing sums on loan to a local authority,

being in either case an account kept by the solicitor in his own name [<sup>F57</sup>or, as the case may be, by the incorporated practice in its own name] for a specified client.]

(4) For the purposes of this section any reference to an account at a bank includes a reference to a deposit receipt at a bank.

#### Textual Amendments

- F55** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 20\(a\)](#)
- F56** [S. 42\(2A\)](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 20\(b\)](#)
- F57** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 20\(c\)](#)
- F58** Words added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 76:3\)](#), s. 25(b)
- F59** Word repealed by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(2), [Sch. 2](#)

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

- C12** [S. 42](#) 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}

VALID FROM 01/10/2008

#### [<sup>F60</sup>42ZA] **Unsatisfactory professional conduct: Council's powers**

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner who is a solicitor is remitted to the Council under section 6(a) or 15(5) (a) of the 2007 Act, the Council must having—

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- (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
  - (b) given the solicitor an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 53ZA, the Council—
  - (a) must—
    - (i) notify the solicitor specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;
    - (ii) so investigate the complaint;
    - (iii) having so investigated the complaint and given the solicitor an opportunity to make representations, determine the complaint;
  - (b) may rely, in their investigation, on any findings in fact which the Tribunal makes available to them under section 53ZA(2) as respects the complaint.
- (3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—
  - (a) shall censure the solicitor;
  - (b) may take any of the steps mentioned in subsection (4) which they consider appropriate.
- (4) The steps are—
  - (a) where the Council consider that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, to direct the solicitor to undertake such education or training as regards the law or legal practice as the Council consider appropriate in that respect;
  - (b) subject to subsection (6), to direct the solicitor to pay a fine not exceeding £2,000;
  - (c) where the Council consider that the complainer has been directly affected by the conduct, to direct the solicitor to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the Court upholding a complaint against the solicitor of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).
- (6) The Council shall not direct the solicitor to pay a fine under subsection (4)(b) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (8) The Council shall intimate—
  - (a) a determination under subsection (1) or (2);
  - (b) any censure under subsection (3)(a);

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- (c) any direction under subsection (4),  
to the complainer and the solicitor specified in it by sending to each of them a copy of the determination, censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A solicitor in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—
- (a) determination;
  - (b) direction (whether or not he is appealing against the determination).
- (10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.
- (11) Where the Council have upheld the conduct complaint but have not directed the solicitor under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.
- (12) A complainer to whom the Council have directed a solicitor under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.
- (13) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)(c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (14) A statutory instrument containing an order under—
- (a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (15) In this section, “complainer” means the person who made the complaint and, where the complaint was made by the person on behalf of another person, includes that other person.

#### Textual Amendments

**F60** Ss. 42ZA, 42ZB inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 53(2), 82 (with s. 77); S.S.I. 2008/311, art. 2



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VALID FROM 01/10/2008

#### **42ZB Unsatisfactory professional conduct: Council's powers to monitor compliance with direction under section 42ZA(4)**

- (1) The Council shall, by notice in writing, require every solicitor who is specified in—
  - (a) a direction made under section 42ZA(4); or
  - (b) such a direction as confirmed or varied on appeal by—
    - (i) the Tribunal; or
    - (ii) the Court,to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (2) Where an appeal is made under section 42ZA(9) or (12) or 54A(1) or (2) against a direction made under section 42ZA(4), any notice under subsection (1)(a) above relating to the direction shall cease to have effect pending the outcome of the appeal.]

#### **Textual Amendments**

**F60** Ss. 42ZA, 42ZB inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 53(2), 82 (with s. 77); S.S.I. 2008/311, art. 2

VALID FROM 01/10/2008

#### **[<sup>F61</sup>42ZC Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council's powers**

- (1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner who is a solicitor, they may direct him to undertake such education or training as regards the law or legal practice as the Council consider appropriate in the circumstances.
- (2) The Council shall by notice in writing—
  - (a) intimate a direction under subsection (1) to the solicitor;
  - (b) require the solicitor to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (3) Where an appeal is made under section 42ZD(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

#### **Textual Amendments**

**F61** Ss. 42ZC, 42ZD inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 53(2), 82 (with s. 77); S.S.I. 2008/311, art. 2

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VALID FROM 01/10/2008

#### **42ZD Direction under section 42ZC(2): appeal by practitioner**

- (1) A solicitor in respect of whom a direction has been made under section 42ZC(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.
- (2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.
- (3) The solicitor may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the Court against the decision.
- (4) On an appeal to the Court under subsection (3), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the Court on an appeal under subsection (3) shall be final.]

#### **Textual Amendments**

**F61** Ss. 42ZC, 42ZD inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 53(2), 82 (with s. 77); S.S.I. 2008/311, art. 2

#### **[<sup>F62</sup>42A Powers where inadequate professional services alleged.**

- (1) Where—
  - (a) the Council receive, from any person having an interest, a complaint that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and
  - (b) the Council, after inquiry and after giving the solicitor an opportunity to make representations, uphold the complaint,
 they may take such of the steps mentioned in subsection (2) as they think fit.
- (2) The steps referred to in subsection (1) are—
  - (a) to determine that the amount of the fees and outlays to which the solicitor shall be entitled for the services shall be—
    - (i) nil; or
    - (ii) such amount as the Council may specify in the determination,
 and to direct the solicitor to comply, or secure compliance, with such of the requirements set out in subsection (3) as appear to them to be necessary to give effect to the determination;
  - (b) to direct the solicitor to secure the rectification at his own expense of any such error, omission or other deficiency arising in connection with the services as the Council may specify;
  - (c) to direct the solicitor to take, at his own expense, such other action in the interests of the client as the Council may specify.

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- [ to direct the solicitor to pay to the client by way of compensation such sum, <sup>F63</sup>(d) not exceeding [<sup>F64</sup>£5,000], as the Council may specify.]
- (3) The requirements referred to in subsection (2)(a) are—
- (a) to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the solicitor in connection with the services;
  - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (4) Before making a determination in accordance with subsection (2)(a) the Council may submit the solicitor's account for the fees and outlays to the Auditor of the Court of Session for taxation.
- (5) Where a solicitor in respect of whom a complaint of inadequate professional services is made was, at the time when the services were provided, an employee of another solicitor, a direction under this section shall specify and apply to that other solicitor as well as the solicitor in respect of whom the complaint is made.
- (6) The Council shall intimate a determination or direction made under this section to every solicitor specified in it by sending a copy of the determination or direction to him.
- (7) A solicitor in respect of whom a determination or direction has been made under this section may, within 21 days of the date on which the determination or direction is intimated to him, appeal to the Tribunal against the determination or direction.
- (8) In the foregoing provisions of this section—
- “client”, in relation to any matter in which a solicitor has been instructed, includes any person on whose behalf the person who gave the instructions was acting;
- “complaint” includes a complaint of provision of inadequate professional services remitted to the Council by the Tribunal under paragraph 8A of Schedule 4; and
- “solicitor” includes—
- (a) any solicitor, whether or not he had a practising certificate in force at the time of provision of the professional services which are alleged to be inadequate, and notwithstanding that subsequent to that time he has had his name removed from or struck off the roll, ceased to practise or been suspended from practice;
  - (b) a firm of solicitors, whether or not, since the provision of the professional services which are alleged to be inadequate—
    - (i) there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner; or
    - (ii) the firm has ceased to practise; and
  - (c) an incorporated practice, whether or not, since the provision of the professional services which are alleged to be inadequate—
    - (i) there has been any change in the persons exercising the management and control of the practice; or
    - (ii) the practice has ceased to be recognised by virtue of section 34(1A) or has been wound up.]

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#### Textual Amendments

- F62** Ss. 42A, 42B inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), ss. 1, 6(3)
- F63** S. 42A(2)(d) inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) Scotland Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(8); S.I. 1991/1252, art. 3, Sch.1
- F64** Sum in s. 43A(2)(d) substituted (1.4.2005) by The Solicitors (Scotland) Act 1980 (Compensation for Inadequate Professional Services) Order (S.S.I. 2004/550), {art. 2(a)}

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

- C13** S. 42A 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}

### [<sup>F65</sup> 42B Inadequate professional services: Council’s powers to monitor compliance with directions.

- (1) The Council shall, by notice in writing, require every solicitor specified in—
- (a) a direction made under section 42A; or
  - (b) such a direction as confirmed or varied on appeal by—
    - (i) the Tribunal; or
    - (ii) the Court,
 to give, within such period being not less than 21 days as the notice may specify, an explanation of the steps which he has taken to comply with the direction.
- (2) Where an appeal is made under subsection (7) of section 42A against a direction made under that section, any notice under subsection (1)(a) above relating to that direction shall cease to have effect.
- (3) Where an appeal is made by virtue of subsection (2) of section 53B against a decision of the Tribunal under subsection (1) of that section, any notice under subsection (1)(b)(i) above relating to the direction confirmed or varied by that decision shall cease to have effect.
- (4) In this section “solicitor” has the same meaning as in section 42A(8).]

#### Textual Amendments

- F65** Ss. 42A, 42B inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), ss. 1, 6(3)

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

- C14** S. 42B 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}

### [<sup>F66</sup> 42C Powers to examine documents and demand explanations in connection with complaints.

- (1) Where the Council are satisfied that it is necessary for them to do so for the purpose of investigating a complaint made to them or remitted to them by the Tribunal alleging—
- (a) professional misconduct by a solicitor;
  - (b) the failure of an incorporated practice to comply with any provision of this Act or of rules made under this Act applicable to that practice; or

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- (c) the provision by a solicitor or an incorporated practice of inadequate professional services,
- the Council may give notice in writing in accordance with subsection (2) to the solicitor or his firm or to the incorporated practice or, where the solicitor is an employee of a firm or of an incorporated practice, to his employer.
- (2) A notice under subsection (1) may require—
- (a) the production or delivery to any person appointed by the Council, at a time and place specified in the notice, of all documents to which this section applies which are in the possession or control of the solicitor, firm or incorporated practice and relate to the matters to which the complaint relates (whether or not they relate also to other matters); and
- (b) an explanation, within such period, not being less than 21 days, as the notice may specify, from the solicitor, firm or incorporated practice regarding the matters to which the complaint relates.
- (3) This section applies to the documents specified in section 38(2).
- (4) Part II of Schedule 3 shall have effect in relation to the powers conferred by subsection (1) to require the production or delivery of documents as it has effect in relation to the powers conferred by section 38, but with the following modifications—
- (a) for the references in that Part to section 38 there shall be substituted references to this section; and
- (b) for the reference in paragraph 5(1) in that Part to a person failing to produce or deliver documents immediately on being required by the Council to do so there shall be substituted a reference to a person failing to produce or deliver the documents within the time specified in the notice under subsection (1) of this section.]

#### Textual Amendments

**F66** S. 42C inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 2

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

**C15** S. 42C 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}

### *Protection of clients*

#### **43 Guarantee Fund**

- (1) There shall be a fund to be called “The Scottish Solicitors Guarantee Fund” (in this Act referred to as “the Guarantee Fund”, which shall be vested in the Society and shall be under the control and management of the Council.
- (2) Subject to the provisions of this section and of Schedule 3 the Guarantee Fund shall be held by the Society for the purpose of making grants in order to compensate persons who in the opinion of the Council suffer pecuniary loss by reason of dishonesty on the part of
- [<sup>F67</sup>(a)] any solicitor [<sup>F68</sup>, registered foreign lawyer][<sup>F69</sup>or registered European lawyer] in practice in the United Kingdom, or any employee of such a solicitor [<sup>F68</sup>,

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- registered foreign lawyer][<sup>F69</sup> or registered European lawyer] in connection with the practice of the solicitor [<sup>F68</sup>, registered foreign lawyer][<sup>F69</sup> or registered European lawyer], whether or not he had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the roll or may have ceased to practise or been suspended from practice [<sup>F70</sup>; or
- (b) any incorporated practice or any director, manager, secretary or other employee of an incorporated practice, notwithstanding that subsequent to the commission of that act it may have ceased to be recognised under section 34(1A) or have been wound up].
- (3) No grant may be made under this section—
- (a) in respect of a loss made good otherwise;
- (b) in respect of a loss which in the opinion of the Council has arisen while the solicitor was suspended from practice;
- (c) to a solicitor or his representatives in respect of a loss suffered by him or them in connection with his practice as a solicitor by reason of dishonesty on the part of a partner or employee of his;
- [<sup>F71</sup>(cc) to an incorporated practice or any director or member thereof in respect of a loss suffered by it or him by reason of dishonesty on the part of any director, manager, secretary or other employee of the incorporated practice in connection with the practice; <sup>F72</sup> . . . ]
- (d) unless an application for a grant is made to the Society in such manner, and within such period after the date on which the loss first came to the knowledge of the applicant, as may be prescribed by rules made under Schedule 3 [<sup>F73</sup>; <sup>F74</sup> . . .
- (e) in respect of any default of a registered European lawyer, or any of his employees or partners, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the registered European lawyer's practice in Scotland.][<sup>F75</sup>;
- (f) in respect of any act or default of a registered foreign lawyer, or any of his employees or partners, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the registered foreign lawyer's practice, or any of his partners' practice, in Scotland; or
- (g) in respect of any act or default of any member, director, manager, secretary or other employee of an incorporated practice which is a multi-national practice, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the incorporated practice's practice in Scotland.]
- (4) The decision of the Council with respect to any application for a grant shall be final.
- (5) The Council may refuse to make a grant, or may make a grant only to a limited extent, if they are of opinion that there has been negligence on the part of the applicant or of any person for whom he is responsible which has contributed to the loss in question.
- (6) The Council or any committee appointed by them may administer oaths for the purpose of inquiry into any matters which affect the making or refusal of a grant from the Guarantee Fund.

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(7) Part I of Schedule 3 shall have effect with respect to the Guarantee Fund, including the making of contributions thereto by solicitors and the administration and management of the Fund by the Council; but nothing in that Schedule shall apply to or in the case of a solicitor—

- (a) who is not in practice as a solicitor; or
- (b) who is suspended from practice as a solicitor during suspension; or
- (c) who is in any such employment as is specified in section 35(4) [<sup>F76</sup>or in the employment of an incorporated practice];

but where any solicitor in any such employment as is mentioned in paragraph (c) engages in private practice as a solicitor, the said Schedule and the other provisions of this Act relating to the Guarantee Fund shall apply to him and in his case so far as regards such private practice.

#### Textual Amendments

- F67** “(a)” inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 21(a)**
- F68** Words in s. 43(2)(a) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 10(a)}
- F69** Words in s. 43(2) inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(11)(a)**
- F70** “; or” and s. 43(2)(b) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 21(a)**
- F71** S. 43(3)(cc) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 21(b)**
- F72** Word in s. 43(3)(cc) repealed (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(11)(b)(i)**
- F73** S. 43(3)(e) and the preceding word inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(11)(b)(ii)**
- F74** Word in s. 43(3)(d) repealed (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 10(b)(i)}
- F75** S. 43(3)(f)(g) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 10(b)(ii)}
- F76** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 21(c)**

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

- C16** S. 43 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}

## 44 Professional indemnity.

(1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors [<sup>F77</sup>and incorporated practices] against any class of professional liability, and the rules may for the purpose of providing such indemnity do all or any of the following things, namely—

- (a) authorise or require the Society to establish and maintain a fund or funds;
- (b) authorise or require the Society to take out and maintain insurance with [<sup>F78</sup>an authorised insurer];

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- (c) require solicitors or any specified class of solicitors [<sup>F77</sup>and incorporated practices or any specified class thereof] to take out and maintain insurance with [<sup>F78</sup>an authorised insurer].
- (2) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of the rules.
- (3) Without prejudice to the generality of subsections (1) and (2) rules made under this section—
- (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
  - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (1)(a) and require solicitors or any class of solicitors [<sup>F79</sup>and incorporated practices or any class of incorporated practices] to make payments to any such fund;
  - (c) may require solicitors or any class of solicitors [<sup>F79</sup>and incorporated practices or any class of incorporated practices] to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (1) (b);
  - (d) may prescribe the conditions which an insurance policy must satisfy for the purpose of subsection (1)(c);
  - (e) may authorise the Society to determine the amount of any payments required by the rules subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
  - (f) may specify circumstances in which, where a solicitor [<sup>F79</sup>or incorporated practice] for whom indemnity is provided has failed to comply with the rules, proceedings in respect of sums paid by way of indemnity in connection with a matter in relation to which he [<sup>F79</sup>or, as the case may be, it] has failed to comply may be taken against him [<sup>F79</sup>or, as the case may be, it] by the Society or by insurers;
  - (g) may specify circumstances in which solicitors [<sup>F79</sup>and incorporated practices] are exempt from the rules;
  - (h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
  - (i) may contain incidental, procedural or supplementary provisions.
- (4) Failure to comply with rules made under this section may be treated as professional misconduct for the purposes of Part IV, and any person may make a complaint in respect of that failure to the Discipline Tribunal.
- (5) In this section [<sup>F80</sup> an “authorised insurer” is—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of general liability insurance;
  - (b) a person who has permission under Part 4 of that Act to effect or carry out contracts of insurance relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;
  - (c) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of general liability insurance; or



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- (d) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;]

“professional liability” means any civil liability incurred by a solicitor or former solicitor in connection with his practice or in connection with any trust of which he is or formerly was a trustee [<sup>F81</sup>and, as respects incorporated practices, means any liability incurred by it which if it had been incurred by a solicitor would constitute such civil liability]

[<sup>F82</sup>(6) The definition of “authorised insurer” in subsection (5) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

#### Textual Amendments

- F77** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 22(a)
- F78** Words in s. 44(1)(b)(c) substituted (19.11.1992) by 1992/2890, reg. 12(2)
- F79** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 22(b)
- F80** Definition in s. 44(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 223(2)
- F81** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 22(c)
- F82** S. 44(6) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 223(3)

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

- C17** S. 44 modified (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 14}

## 45 Safeguarding interests of clients of solicitor struck off or suspended.

- (1) The following provisions of this section [<sup>F83</sup>(except subsection (4A))] shall have effect in relation to the practice of a solicitor whose name is struck off the roll or who is suspended from practice as a solicitor under any provision of this Act [<sup>F84</sup>and, in relation to any incorporated practice, the recognition under section 34(1A) of which is revoked].
- (2) [<sup>F85</sup>In the case of a solicitor,] the solicitor shall within 21 days of the material date satisfy the Council that he has made suitable arrangements for making available to his clients or to some other solicitor or solicitors [<sup>F85</sup>or incorporated practice] instructed by his clients or by himself—
- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm’s possession or control which are held on behalf of his clients or which relate to any trust of which he is sole trustee or co-trustee only with one or more of his partners or employees, and
  - (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid.

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[<sup>F86</sup>(2A) In the case of an incorporated practice, it shall within 21 days of the material date satisfy the Council that it has made suitable arrangements for making available to its clients or to some other solicitor or solicitors or incorporated practice instructed by its clients or itself—

- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in its possession or control which are held on behalf of its clients or which relate to any trust of which it is sole trustee or co-trustee only with one or more of its employees; and
- (b) all sums of money due from it or held by it on behalf of its clients or subject to any trust as aforesaid.]

[<sup>F87</sup>(3A) If the solicitor or, as the case may be, the incorporated practice fails so to satisfy the Council, the Council may—

- (a) require the production or delivery to any person appointed by them at a time and place fixed by them of the documents mentioned in subsection (3B);
- (b) take possession of all such documents; and
- (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of the solicitor or his firm or, as the case may be, the incorporated practice without the leave of the Court and the Court may make such order.

(3B) The documents are—

- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm or, as the case may be, the incorporated practice;
- (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the solicitor is a sole trustee or is a co-trustee only with one or more of his partners or employees or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or of which the practice is a co-trustee only with one or more of its employees.]

(4) If the solicitor, immediately before the striking off or, as the case may be, the suspension, was a sole solicitor, the right to operate on, or otherwise deal with, any client account in the name of the solicitor or his firm shall on the occurrence of that event vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person.

[<sup>F88</sup>(4A) Where—

- (a) a solicitor is restricted from acting as a principal; and
- (b) immediately before the restriction the solicitor was a sole solicitor,

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

[<sup>F89</sup>(4B) Part II of Schedule 3 has effect in relation to the powers of the Council under subsection (3A).]

(5) In this section—

“material date” means whichever is the latest of—

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- (a) the date when the order of the Tribunal or Court by or in pursuance of which the solicitor is struck off the roll or suspended from practice [<sup>F90</sup>or, as the case may be, the recognition under section 34(1A) is revoked.] is to take effect;
- (b) the last date on which—
- (i) an appeal against that order may be lodged or an application may be made to the Court under section 54(2), or
  - (ii) an appeal against a decision of the Council under section 40 may be lodged;
- (c) the date on which any such appeal is dismissed or abandoned; <sup>F91</sup> . . .
- [<sup>F92</sup>“principal” means a solicitor who is a sole practitioner or is a partner in a firm of two or more solicitors or is a director of an incorporated practice which is a company or a solicitor who is a member of a multi-national practice having its principal place of business in Scotland;]
- “sole solicitor” means a solicitor practising under his own name or as a single solicitor under a firm name.

#### Textual Amendments

- F83** Words in s. 45(1) inserted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(15)(a)** (with s. 77); S.S.I. 2007/497, **art. 2**
- F84** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 23(a)**
- F85** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 23(b)**
- F86** S. 45(2A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 23(c)**
- F87** S. 45(3A)(3B) substituted (23.11.2007) for s. 45(3) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(15)(b)** (with s. 77); S.S.I. 2007/497, **art. 2**
- F88** S. 45(4A) inserted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 60(2)(a)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**
- F89** S. 45(4B) inserted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(15)(c)** (with s. 77); S.S.I. 2007/497, **art. 2**
- F90** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 23(e)**
- F91** Word in s. 45(5) repealed (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(15)(d)** (with s. 77); S.S.I. 2007/497, **art. 2**
- F92** S. 45(5): definition of "principal" inserted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 60(2)(b)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**

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

- C18** S. 45 applied in part (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}

## 46 Safeguarding interests of clients in certain other cases.

- (1) Where the Council are satisfied that a sole solicitor is incapacitated by illness or accident to such an extent as to be unable to operate on, or otherwise deal with, any client account in the name of the solicitor, or his firm, and that no other arrangements acceptable to the Council have been made, the right to operate on, or otherwise deal with, that account shall vest in the Society (notwithstanding any enactment or rule

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of law to the contrary) to the exclusion of any other person so long, but only so long, as the Council are satisfied that such incapacity and absence of other acceptable arrangements continues.

(2) Where a sole solicitor ceases to practise for any reason other than that his name has been struck off the roll or that he has been suspended from practice, and the Council are not satisfied that suitable arrangements have been made for making available to his clients or to some other solicitor or solicitors instructed by his clients or on their behalf—

- (a) all deed, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is the sole trustee, or a co-trustee only with one or more of his employees, and
- (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,

[<sup>F93</sup> the Council may do any of the things mentioned in subsection (3A)].

(3) Where the sole solicitor dies—

- (a) the right to operate on or otherwise deal with any client account in the name of the solicitor or his firm shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any personal representatives of the solicitor, and shall be exercisable as from the death of the solicitor; and
- (b) if the Council are not satisfied that suitable arrangements have been made for making available to the solicitor's clients or to some other solicitor or solicitors instructed by his clients or on their behalf—
  - (i) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents which were in his or his firm's possession or control which were held on behalf of his clients or which relate to any trust of which he was the sole trustee, or a co-trustee only with one or more of his employees, and
  - (ii) all sums of money which were due from him or his firm or were held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,

[<sup>F93</sup> the Council may do any of the things mentioned in subsection (3A)].

[<sup>F94</sup>(3A) The things are to—

- (a) require the production or delivery to any person appointed by the Council at a time and a place fixed by them of the documents mentioned in subsection (3B);
- (b) take possession of all such documents; and
- (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of the solicitor or his firm without the leave of the Court and the Court may make such order.

(3B) The documents are—

- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm;
- (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which he is a sole trustee or is a co-trustee only with one or more of his employees.]

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(4) In a case where the Society have operated on or otherwise dealt with a client account by virtue of subsection (3) the Society shall be entitled to recover from the estate of the solicitor who has died such reasonable expenses as the Society have thereby incurred.

[<sup>F95</sup>(4A) Part II of Schedule 3 has effect in relation to the powers of the Council under subsection (2) or (3).]

(5) In this section “sole solicitor” has the same meaning as in section 45.

#### Textual Amendments

- F93** Words in s. 46(2)(3) substituted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(16\)\(a\)](#) (with s. 77); S.S.I. 2007/497, [art. 2](#)
- F94** S. 46(3A)(3B) inserted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(16\)\(b\)](#) (with s. 77); S.S.I. 2007/497, [art. 2](#)
- F95** S. 46(4A) inserted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(16\)\(c\)](#) (with s. 77); S.S.I. 2007/497, [art. 2](#)

#### 47 Restriction on employing solicitor struck off or suspended.

- (1) Unless he has the written permission of the Council to do so, a solicitor shall not, in connection with his [<sup>F96</sup>or, as the case may be, its] practice as a solicitor, employ or remunerate any person who to his knowledge is disqualified from practising as a solicitor [<sup>F96</sup>and, unless it has such permission, an incorporated practice shall not] by reason of the fact that his name has been struck off the roll or that he is suspended from practice as a solicitor.
- (2) Any permission given by the Council for the purposes of subsection (1) may be given for such period and subject to such conditions as the Council think fit.
- (3) A solicitor [<sup>F97</sup>or, as the case may be, incorporated practice] aggrieved by the refusal of the Council to grant any such permission as aforesaid, or by any conditions attached by the Council to the grant thereof, may appeal to the Court; and on any such appeal the Court may give such directions in the matter as it thinks fit.
- (4) If any solicitor acts in contravention of this section or of any condition subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice as a solicitor for such period as the Tribunal, or, in the case of an appeal, the Court, may think fit [<sup>F98</sup>and if any incorporated practice so acts its recognition under section 34(1A) shall be revoked.]

#### Textual Amendments

- F96** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 24\(a\)](#)
- F97** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 24\(b\)](#)
- F98** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 24\(c\)](#)

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

**C19** S. 47 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}

**48** ..... **F99**

**Textual Amendments**

**F99** S. 48 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. II para. 5

**Status:**

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**Changes to legislation:**

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