



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

Powers of Council to intervene

38 Powers where dishonesty alleged.

^{F1}

Textual Amendments

F1 S. 38 repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(7), Sch. 23 (with ss. 29, 192, 193); S.I. 2008/1436, art. 3

39 Powers where delay alleged.

^{F2}

Textual Amendments

F2 S. 39 repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(7), Sch. 23 (with ss. 29, 192, 193); S.I. 2008/1436, art. 3

[^{F3}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

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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- and a certificate so withdrawn shall cease to have effect and the solicitor shall be suspended from practice as a solicitor.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 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).]
- [^{F4}(10) The Council shall notify the Commission of any case—
- (a) where any of the following things occur—
 - (i) they withdraw a practising certificate under subsection (2);
 - (ii) they terminate a suspension from practice and restore a practising certificate under subsection (3);
 - (iii) the Court makes an order under subsection (8); and
 - (b) which does not involve a complaint remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act.]

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Textual Amendments

- F3** S. 39A inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 4
- F4** S. 39A(10) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(11)** (with s. 77); S.S.I. 2008/311, **art. 2**

Modifications etc. (not altering text)

- C1** 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 [^{F5}or incorporated practice], after enquiry and after giving the solicitor [^{F5}or, as the case may be, incorporated practice] an opportunity of being heard, that the solicitor [^{F5}or, as the case may be, incorporated practice][^{F6}has failed or] is failing to comply with any provisions of—
- section 35 or the accounts rules made under that section, or
 - section 37 or the accountant's certificate rules or other rules made under that section,
- so far as applicable in his [^{F5}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
- [^{F7}(a)] withdraw the practising certificate held by the solicitor [^{F8}or, as the case may be—
- 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 [^{F9}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 [^{F9}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 [^{F10}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.]
- (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 [^{F11}a] 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).
- [^{F12}(5) The Council shall notify the Commission of any case—
- where any of the following things occur—
 - they withdraw a practising certificate under subsection (1);

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- (ii) they terminate a suspension from practice and restore a practising certificate under subsection (2);
- (iii) the Court makes an order under subsection (3); and
- (b) which does not involve a complaint remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act.]

Textual Amendments

- F5** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 18\(a\)](#)
- F6** Words inserted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), [Sch. 1 para. 12](#)
- F7** “(a)” inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 18\(a\)](#)
- F8** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 18\(a\)](#)
- F9** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 18\(b\)](#)
- F10** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 18\(b\)](#)
- F11** Word substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 18\(c\)](#)
- F12** [S. 40\(5\)](#) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(12\)](#) (with s. 77); [S.S.I. 2008/311](#), [art. 2](#)

Modifications etc. (not altering text)

- C2** [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 [^{F13}or an incorporated practice], and, on consideration of the report of the investigation, the Council are satisfied—

- (a) that the solicitor [^{F14}or, as the case may be, the incorporated practice] has failed. . . ^{F15} to comply with the provisions of those rules, and
- (b) that, [^{F16}, 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 [^{F17}; or
- (c) that, in the case of an incorporated practice, either—
 - (i) its liabilities exceed its assets, or
 - (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

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(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 [^{F18}or, as the case may be, of the incorporated practice]; and the Court, on consideration of the said report and after giving the solicitor [^{F19}or, as the case may be, the incorporated practice] an opportunity of being heard, may appoint a judicial factor on [^{F20}such] estate, or do otherwise as seems proper to it.

Textual Amendments

- F13** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(a)**
- F14** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(b)**
- F15** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1)(2), Sch. 1 para. 13, **Sch. 2**
- F16** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(c)**
- F17** S. 41(c) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(d)**
- F18** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(e)**
- F19** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 19(f)**
- F20** 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)

- C3** 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) [^{F21}or (2A)], the sum at the credit of any client account kept by a solicitor [^{F21}or an incorporated practice] (or where several such accounts are kept by him [^{F21}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 [^{F21}or, as the case may be, by it on behalf of its clients] and remaining due by him [^{F21}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 [^{F21}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 [^{F21}or, as the case may be, by it on their behalf] and remaining due by him [^{F21}or, as the case may be, by it] to them.
- (2) The events to which subsection (1) applies are in relation to any solicitor—
- the sequestration of his estate;
 - the granting by him of a trust deed for behoof of creditors;
 - the appointment of a judicial factor on his estate.

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- [^{F22}(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 [^{F23}or an incorporated practice] keeps an account at a bank in his [^{F23}or, as the case may be, its] own name [^{F23}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 [^{F23}or, as the case may be, by the incorporated practice on that behalf] and remaining due by him [^{F23}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 [^{F24}; nor shall any regard be had for such purposes to any—
- (a) deposit or share account with a . . . ^{F25} 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 [^{F23}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

- F21** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 20(a)**
- F22** 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)**
- F23** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 20(c)**
- F24** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 76:3), s. 25(b)
- F25** Word repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**

Modifications etc. (not altering text)

- C4** 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}

[^{F26}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—
 - (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—

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- (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);
 - (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

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- 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

F26 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](#)

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

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- (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

F26 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

[^{F27} 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

F27 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

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.

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(5) A decision of the Court on an appeal under subsection (3) shall be final.]

Textual Amendments

F27 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](#)

42A Powers where inadequate professional services alleged.

F28

Textual Amendments

F28 S. 42A repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 195, 210, 211, Sch. 20 para. 1(7), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2008/1436, [art. 3](#)

42B Inadequate professional services: Council’s powers to monitor compliance with directions.

F29

Textual Amendments

F29 S. 42B repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 195, 210, 211, Sch. 20 para. 1(7), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2008/1436, [art. 3](#)

[^{F30}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) ^{F31}
- (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
- (c) ^{F31}

the Council may give notice in writing in accordance with subsection (2) ^{F32} . . . to the incorporated practice ^{F33}

(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 ^{F34} . . . 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 ^{F34} . . . incorporated practice regarding the matters to which the complaint relates.

(3) This section applies to the [^{F35} following documents—

Status: Point in time view as at 01/04/2011.

Changes to legislation: Solicitors (Scotland) Act 1980, Cross Heading: Powers of Council to intervene is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of ^{F36} . . . the incorporated practice;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust ^{F37} . . . 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) 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 [^{F38}sections ^{F39} . . . , 45 and 46], but with the following modifications—
- (a) for the references in that Part to [^{F38}sections ^{F39} . . . , 45 and 46] 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.]

[^{F40}(5) ^{F41}]

Textual Amendments

- F30** S. 42C inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 2
- F31** S. 42C(1)(a)(c) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(a)(i), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F32** Words in s. 42C(1) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(a)(ii), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F33** Words in s. 42C(1) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(a)(iii), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F34** Words in s. 42C(2)(a)(b) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(b), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F35** Words in s. 42C(3) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(13)(a)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F36** Words in s. 42C(3)(a) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(c)(i), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F37** Words in s. 42C(3)(b) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(c)(ii), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F38** Words in s. 42C(4) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(13)(b)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F39** Word in s. 42C(4) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(d), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F40** S. 42C(5) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(13)(c)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F41** S. 42C(5) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(8)(e), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**

Modifications etc. (not altering text)

- C5** 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}

Status:

Point in time view as at 01/04/2011.

Changes to legislation:

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