



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART IV

COMPLAINTS AND DISCIPLINARY PROCEEDINGS

Lay Observer

F149

Textual Amendments

F1 S. 49 repealed (15.8.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 9; S.I. 1991/1252, art. 4, Sch. 2.

The Scottish Solicitors' Discipline Tribunal

50 The Tribunal.

- (1) For the purposes of this Part of this Act [^{F2}and sections 16 to 23 (which relate to the provision of conveyancing and executry services) of the 1990 Act] there shall be a tribunal, which shall be known as the Scottish Solicitors' Discipline Tribunal and is in this Act referred to as "the Tribunal".
- (2) Part I of Schedule 4 shall have effect in relation to the constitution of the Tribunal.

Textual Amendments

F2 Words in s. 50(1) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 13(a), 21(2)(3); S.S.I. 2003/384, art. 2

Status: Point in time view as at 02/07/2012.

Changes to legislation: Solicitors (Scotland) Act 1980, Part IV is up to date with all changes known to be in force on or before 28 July 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)

51 Complaints to Tribunal.

- (1) A complaint may be made to the Tribunal by the Council; and, for the purpose of investigating and prosecuting complaints, the Council may appoint a solicitor to act as fiscal.
- [^{F3}(1A) In subsection (1) above, without prejudice to the generality of that subsection, the reference to a complaint includes a complaint in respect of conveyancing and executry practitioners and the provision by them of conveyancing and executry services (those expressions having the meanings given in section 23 of the 1990 Act).]
- (2) The persons mentioned in subsection (3) may report to the Tribunal any case where it appears that ^{F4}. . . [^{F5} an incorporated practice may have failed to comply with any provision of this Act or of rules made under this Act applicable to it]. . . , and any such report shall be treated by the Tribunal as a complain under subsection (1).
- [^{F6}(2A) ^{F7}]
- (3) The persons referred to in subsection (2) are—
- (a) the Lord Advocate;
 - [^{F8}(aa) the Advocate General for Scotland]
 - (b) any judge;
 - [^{F9}(ba) the Dean of the Faculty of Advocates;]
 - (c) the Auditor of the Court of Session;
 - (d) the Auditor of any sheriff court.
 - [^{F10}(e) the Scottish Legal Aid Board.]
 - [^{F11}(f) the Scottish legal services ombudsman.]
- [^{F12}(4) Where a report is made to the Tribunal under subsection (2) the Tribunal may, if it thinks fit, appoint a solicitor to prosecute the complaint and the expenses of the solicitor, so far as not recoverable from the solicitor complained against, shall be paid out of the funds of the Tribunal.]

Textual Amendments

- F3** S. 51(1A) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 13(b)**, 21(2)(3); S.S.I. 2003/384, **art. 2**
- F4** Words in s. 51(2) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(9)(a)(i), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F5** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 26**
- F6** S. 51(2A) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(17)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F7** S. 51(2A) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(9)(b), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F8** S. 51(3)(aa) inserted (20.5.1999) by S.I. 1999/1042, arts. 1(2)(b), 4, **Sch. 2 Pt. I para. 7(3)**
- F9** S. 51(3)(ba) 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(9)(a)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F10** S. 51(3)(e) inserted by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 43, 45, Sch. 3 para. 8(3), **Sch. 4 para. 3(1)**
- F11** S. 51(3)(f) substituted (3.6.1991) (for para. (f) added by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 14(b)**) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(9)(b)**; S.I. 1991/1252, art. 3, **Sch. 1**

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F12 S. 51(4) added by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 14(c)**

Modifications etc. (not altering text)

C1 S. 51 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}

52 Procedure on complaints [^{F13}and appeals] to Tribunal.

- (1) Part II of Schedule 4, shall have effect in relation to the procedure and powers of the Tribunal in relation to any complaint [^{F14}or appeal] concerning a solicitor [^{F15}or an incorporated practice].
- (2) Subject to the other provisions of this Part [^{F16}, the provisions of sections 16 to 23 of the 1990 Act], and of any rules of court made under this Act, the Tribunal, with the concurrence of the Lord President, may make rules—
- (a) for regulating the making, hearing and determining of complaints made to it under this Act; and
 - [^{F17}(aa) for regulating the making, hearing and determining of appeals made to it under section ^{F18} . . . [^{F19}42ZA(9), (10), (11) or (12), 42ZD(1)] or 53D(1);]
 - [^{F20}(ab) for regulating the making, hearing and determining of—
 - (i) inquiries under subsection (2A) of section 20 of the 1990 Act; and
 - (ii) appeals under subsection [^{F21}(8A)(b), (11)(b) or (11ZC)] of that section.
 - [appeals under section 20ZB(9), (10), (11) or (12) or 20ZE(1) of that ^{F22}(iii) Act;]]
 - (b) generally as to the procedure of the Tribunal (including provision for hearings taking place in public or wholly or partly in private).
- [^{F23}(3) Rules made by the Tribunal under subsection (2) for regulating the making, hearing or determining of appeals referred to in paragraph (aa) or (ab)(ii) of that subsection may include provision as to persons being entitled, or required by the Tribunal, to appear or be represented at the appeal.]

Textual Amendments

- F13** S. 52: words in sidenote inserted (1.10.2008) by virtue of Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(18)(a)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F14** Words in s. 52(1) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(18)(b)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F15** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 27**
- F16** Words in s. 52(2) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 13(c)(i), 21(2)(3)**; S.S.I. 2003/384, **art. 2**
- F17** S. 52(2)(aa) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 15**
- F18** Words in s. 52(2)(aa) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(10), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F19** Word in s. 52(2)(aa) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(18)(c)(i)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F20** S. 52(2)(ab) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 13(c)(ii), 21(2)(3)**; S.S.I. 2003/384, **art. 2**

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- F21** Words in s. 52(2)(ab)(ii) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(18)(c)(ii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F22** S. 52(2)(ab)(iii) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(18)(c)(iii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F23** S. 52(3) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(18)(d)** (with s. 77); S.S.I. 2008/311, **art. 2**

Modifications etc. (not altering text)

- C2** S. 52 applied by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 31(10), 45, **Sch. 4 para. 2**
- C3** S. 52(1) 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}
- C4** S. 52(2) modified (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 14}

53 Powers of Tribunal.

- (1) Subject to the other provisions of this Part, the powers exercisable by the Tribunal under subsection (2) shall be exercisable if—
- (a) after holding an inquiry into a complaint against a solicitor the Tribunal is satisfied that he has been guilty of professional misconduct, or
 - (b) a solicitor has (whether before or after enrolment as a solicitor), been convicted by any court of an act involving dishonesty or has been [^{F24} fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more][^{F25}, or
 - (c) an incorporated practice has been convicted by any court of an offence, which conviction the Tribunal is satisfied renders it unsuitable to continue to be recognised under section 34(1A); or
 - (d) after holding an inquiry into a complaint, the Tribunal is satisfied that an incorporated practice has failed to comply with any provision of this Act or of rules made under this Act applicable to it.]
- (2) Subject to subsection (1), the Tribunal may—
- (a) order that the name of the solicitor be struck off the roll; ^{F26} ...
 - [^{F27}(aa) if the solicitor's name has been removed from the roll under section 9, by order prohibit the restoration of the solicitor's name to the roll;]
 - (b) order that the solicitor be suspended from practice as a solicitor for such time as it may determine; ^{F26} ...
 - [^{F28}(ba) order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;]
 - [^{F29}(bb) where the solicitor has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;]
 - [^{F30}(bc) where—
 - (i) an incorporated practice has been convicted, or has been found to have failed, as referred to in subsection (1)(c) or (d), and

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(ii) the Tribunal consider that the complainer has been directly affected by any misconduct by the practice to which the conviction or failure is (to any extent) attributable,

direct the practice to pay to the complainer compensation (for loss, inconvenience or distress resulting from the misconduct) of such amount not exceeding £5,000 as the Tribunal may specify;]

- (c) subject to subsection [F31(3ZA)], impose on the solicitor [F32or, as the case may be, the incorporated practice] a fine not exceeding [F33£10,000]; F26 ...
- (d) censure the solicitor [F32or, as the case may be, the incorporated practice]; F26 ...
- (e) impose such fine and censure him [F32or, as the case may be, it][F34F26 ...
- (f) order that the recognition under section 34(1A) of the incorporated practice be revoked][F35; or
- (g) order that an investment business certificate issued to a solicitor, a firm of solicitors or an incorporated practice be—
 - (i) suspended for such time as they may determine; or
 - (ii) subject to such terms and conditions as it may direct; or
 - (iii) revoked.]

(3) F36

[F37(3ZA) The Tribunal shall not impose a fine under subsection (2)(c)—

- (a) where the Tribunal is proceeding on the ground referred to in subsection (1) (a) and the solicitor, in relation to the subject matter of the Tribunal's inquiry, has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years;
- (b) where the Tribunal is proceeding on the ground referred to in subsection (1) (b).]

[F38(3A) The powers conferred by [F39subsection (2)(bb) to (e)] may be exercised by the Tribunal—

- (a) in relation to a former solicitor, notwithstanding that his name has been struck off the roll or that he has, since the date of the misconduct, conviction or sentence referred to in subsection (1)(a) or (b), ceased to practise as a solicitor or been suspended from practice;
- (b) in relation to a body corporate which was formerly an incorporated practice, notwithstanding that the body has, since the date of the conviction or failure referred to in subsection (1)(c) or (d), ceased to be recognised as an incorporated practice by virtue of section 34(1A).]

[F40(3B) The power conferred by subsection (2)(ba) may be exercised by the Tribunal either independently of, or in conjunction with, any other power conferred by that subsection.]

- (4) Any fine imposed by the Tribunal under subsection (2) shall be forfeit to Her Majesty.
- (5) Where the Tribunal have exercised the power conferred by subsection (2) to censure, or impose a fine on, a solicitor, or both to censure and impose a fine, the Tribunal may order that the solicitor's practising certificate shall be subject to such terms and conditions as the Tribunal may direct; and the Council shall give effect to any such order of the Tribunal.
- (6) Where the Tribunal order that the name of a solicitor be struck off the roll, or that the solicitor be suspended from practice as a solicitor [F41or that any right of audience

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held by the solicitor by virtue of section 25A be suspended or revoked], the Tribunal may direct that the order shall take effect on the date on which it is intimated to the solicitor; and if any such direction is given the order shall take effect accordingly.

[^{F42}(6A) Where the Tribunal order that the recognition under section 34(1A) of an incorporated practice be revoked, the Tribunal shall direct that the order shall take effect on such date as the Tribunal specifies, being a date not earlier than 60 days after its order is intimated to the incorporated practice, and such an order shall take effect accordingly.]

[^{F43}(6B) Where the Tribunal make an order under subsection (2)(g), they may direct that the order shall take effect on the date on which it is intimated to the solicitor, firm or incorporated practice; and if any such direction is given the order shall take effect accordingly.]

(6C) The Council shall give effect to any order of the Tribunal under subsection (2)(g).]

(7) Where in relation to any such order as is mentioned in subsection (6) [^{F44}, (6A) or (6B)] the Tribunal give a direction under [^{F45}subsection (6) or, as the case may be, subsection (6A)] [^{F46}or (6B)], and an appeal against the order is taken to the Court under section 54, the order shall continue to have effect pending the determination or abandonment of the appeal unless, on an application under subsection (2) of section 54, the Court, otherwise directs.

[^{F47}(7A) In subsection (2)(g), section 53D(1) and paragraph 16(h) of Schedule 4, “ investment business certificate ” means a certificate issued by the Council under Rule 2.2 of the Solicitors (Scotland) (Conduct of Investment Business) Practice Rules 1988.]

[^{F48}(7B) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in its favour bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]

[^{F49}(7C) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bb) [^{F50}or (bc)] of subsection (2) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate.

(7D) A statutory instrument containing an order under subsection (7C) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

[^{F51}(8) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend [^{F52}—

(a)] paragraph (c) of subsection (2) by substituting for the amount for the time being specified in that paragraph such other amount as appears to him to be justified by a change in the value of money.

[^{F53}(b) the definition of “ investment business certificate ” in subsection (7A) by substituting for the reference to Rule 2.2 of the Solicitors (Scotland) (Conduct of Investment Business) Practice Rules 1988, or such reference replacing that reference as may for the time being be specified in that subsection, a reference to such Practice Rule as may from time to time replace Rule 2.2.]]

[^{F54}(9) In subsection (2)(bb) [^{F55}and (bc)] , “ complainer ” has the same meaning as in section 42ZA.]

[^{F56}(10) ^{F36}.....]

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(11) ^{F36}.....]

Textual Amendments

- F24** Words in s. 53(1)(b) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 139(1)(a), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F25** S. 53(1)(c)(d) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 28(a)**
- F26** Word in s. 53(2) repealed (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 136(2)(b), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F27** S. 53(2)(aa) inserted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 136(2)(a), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F28** S. 53(2)(ba) inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. 2 para. 29(10)(a)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F29** S. 53(2)(bb) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(1)(a), 82** (with s. 77); S.S.I. 2008/311, **art. 2**
- F30** S. 53(2)(bc) inserted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 139(1)(b), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F31** Word in s. 53(2)(c) substituted (23.3.2011) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011 (S.S.I. 2011/235), arts. 2(1), **3(3)**
- F32** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 28(b)**
- F33** '£10,000' in s. 53(2)(c) substituted (3.6.1991) by virtue of Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8**, Pt. 2 para. 29(10)(b); S.I. 1991/1252, art. 3, **Sch. 1**
- F34** S. 53(2)(f) and the word “or” added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 28(b)**
- F35** S. 53(2)(g) and “; or” immediately preceding it added by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 16(a)**
- F36** S. 53(3)(10)(11) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), **ss. 195, 210, 211**, Sch. 20 para. 1(11), **Sch. 23** (with **ss. 29, 192, 193**); S.I. 2008/1436, **art. 3**
- F37** S. 53(3ZA) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 81, 82**, **Sch. 5 para. 1(19)(a)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F38** S. 53(3A) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 16(b)**
- F39** Words in s. 53(3A) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 139(1)(c), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F40** S. 53(3B) inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. 2 para. 29(10)(c)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F41** Words in s. 53(6) inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. 2 para. 29(10)(d)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F42** S. 53(6A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 28(c)**
- F43** S. 53(6B)(6C) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 16(c)**
- F44** Words substituted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 16(d)**
- F45** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 28(d)**
- F46** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 16(d)**
- F47** S. 53(7A) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 16(e)**
- F48** S. 53(7B) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 81, 82**, **Sch. 5 para. 1(19)(b)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F49** S. 53(7C)(7D) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(1)(b), 82** (with s. 77); S.S.I. 2008/311, **art. 2**

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- F50** Words in s. 53(7C) inserted (1.5.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 139(1)(d), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F51** S. 53(8) added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), **s. 24(a)(ii)**
- F52** S. 53(8): “—(a)” inserted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), **Sch. 1 para. 16(f)(i)**
- F53** S. 53(8)(b) added by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), **Sch. 1 para. 16(f)(ii)**
- F54** S. 53(9) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 56(1)(c), 82 (with s. 77)**; S.S.I. 2008/311, **art. 2**
- F55** Words in s. 53(9) inserted (1.5.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 139(1)(e), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F56** S. 53(10)(11) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 81, 82, Sch. 5 para. 1(19)(c) (with s. 77)**; S.S.I. 2008/311, **art. 2**

Modifications etc. (not altering text)

- C5** S. 53 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

[^{F57}53ZARemission of complaint by Tribunal to Council

- (1) Where, after holding an inquiry under section 53(1) into a complaint of professional misconduct against a solicitor, the Tribunal—
- is not satisfied that he has been guilty of professional misconduct;
 - considers that he may be guilty of unsatisfactory professional conduct,
- it must remit the complaint to the Council.
- (2) Where the Tribunal remits a complaint to the Council under subsection (1), it may make available to the Council any of its findings in fact in its inquiry into the complaint under section 53(1).

Textual Amendments

- F57** **Ss. 53ZA-53ZC** inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 53(3), 82, (with s. 77)**; S.S.I. 2008/311, **art. 2**

53ZB Powers of Tribunal on appeal: unsatisfactory professional conduct

- (1) On an appeal to the Tribunal under section 42ZA(9) the Tribunal—
- may quash or confirm the determination being appealed against;
 - if it quashes the determination, shall quash the censure accompanying the determination;
 - may quash, confirm or vary the direction being appealed against;
 - may, where it considers that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, direct the solicitor to undertake such education or training as regards the law or legal practice as the Tribunal considers appropriate in that respect;
 - may, subject to subsection (5), fine the solicitor an amount not exceeding £2000;
 - may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not

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exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

- (2) On an appeal to the Tribunal under section 42ZA(10) the Tribunal—
 - (a) may quash the determination being appealed against and make a determination upholding the complaint;
 - (b) if it does so, may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
 - (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 42ZA(11) the Tribunal may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (4) On an appeal under section 42ZA(12) the Tribunal may quash, confirm or vary the direction being appealed against.
- (5) The Tribunal shall not direct the solicitor to pay a fine under subsection (1)(e) 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.
- (6) Any fine directed to be paid under subsection (1)(e) 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.
- (7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The Scottish Ministers may by order made by statutory instrument—
 - (a) amend subsection (1)(e) 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 (1)(f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (9) A statutory instrument containing an order under—
 - (a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (10) In this section, “complainer” has the same meaning as in section 42ZA.

Textual Amendments

F57 Ss. 53ZA-53ZC inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 53\(3\)](#), 82, (with s. 77); [S.S.I. 2008/311](#), [art. 2](#)

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53ZC Enforcement of Council direction: unsatisfactory professional conduct

Where a solicitor fails to comply with a direction given by the Council under section 42ZA(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the Court) before the expiry of the period specified in the notice relating to that direction given to him under section 42ZB(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]

Textual Amendments

F57 Ss. 53ZA-53ZC inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 53(3), 82, (with s. 77); S.S.I. 2008/311, art. 2

53A Inadequate professional services: powers of Tribunal.

F58

Textual Amendments

F58 S. 53A repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(12), Sch. 23 (with ss. 29, 192, 193); S.I. 2008/1436, art. 3 (as amended by S.I. 2008/1591)

53B Inadequate professional services: appeal to Tribunal against Council determination or direction.

F59

Textual Amendments

F59 S. 53B repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(12), Sch. 23 (with ss. 29, 192, 193); S.I. 2008/1436, art. 3 (as amended by S.I. 2008/1591)

53C Inadequate professional services: enforcement by Tribunal of Council direction.

F60

Textual Amendments

F60 S. 53C repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(12), Sch. 23 (with ss. 29, 192, 193); S.I. 2008/1436, art. 3 (as amended by S.I. 2008/1591)

[^{F61}53D Suspension etc. of investment business certificates: appeal to Tribunal.

(1) Where, in accordance with rules made under this Act, the Council suspend or withdraw an investment business certificate or impose conditions or restrictions on it the solicitor, firm of solicitors or incorporated practice to whom it was issued may, within

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21 days of the date of intimation of the decision of the Council, appeal to the Tribunal against that decision.

(2) On an appeal to the Tribunal under subsection (1) the Tribunal may quash, confirm or vary the decision being appealed against.

[The solicitor, firm of solicitors or, as the case may be, the incorporated practice may, ^{F62}(2A) before the expiry of the period of 21 days beginning with the day on which the decision of the Tribunal under subsection (2) is intimated to him or, as the case may be, it, appeal to the Court against the decision.

(2B) The Council may, before the expiry of the period of 21 days beginning with the day on which the decision of the Tribunal under subsection (2) is intimated to them, appeal to the Court against the decision.

(2C) On an appeal under subsection (2A), 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.

(2D) A decision of the Court under subsection (2C) shall be final.]]

Textual Amendments

F61 S. 53D inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 17**

F62 S. 53D(2A)-(2D) substituted (1.10.2008) for s. 53D(3) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(20)** (with s. 77); S.S.I. 2008/311, **art. 2**

54 Appeals from decisions of Tribunal.

(1) ^{F63}

[^{F64}(1A) A solicitor or an incorporated practice may, before the expiry of the period of 21 days beginning with the day on which any decision by the Tribunal mentioned in subsection (1B) is intimated to him or, as the case may be, it appeal to the Court against the decision.

(1B) The decision is—

- (a) where the Tribunal was satisfied as mentioned in section 53(1)(a), the finding that the solicitor has been guilty of professional misconduct;
- (b) where the Tribunal was satisfied as mentioned in section 53(1)(d), the finding that the incorporated practice has failed to comply with any provision of this Act or of any rule made under this Act applicable to the practice;
- (c) in any case falling within paragraph (a) or (b), or where the decision was made because of the circumstances mentioned in section 53(1)(b) or (c), any decision under section 53(2) or (5).

(1C) The Council may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53(2) or (5) is intimated to them, appeal to the Court against the decision; but the Council may not appeal to the Court against a decision of the Tribunal under section 53(2)(bb) [^{F65} or (bc)] .

(1D) Where the Tribunal has found that a solicitor has been guilty of professional misconduct but has not directed him under section 53(2)(bb) [^{F66} or (bc)] to pay compensation, the complainer may, before the expiry of the period of 21 days

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beginning with the day on which the Tribunal's finding is intimated to him, appeal to the Court against the decision of the Tribunal not to make a direction under that subsection.

- (1E) A complainer to whom the Tribunal has directed a solicitor under section 53(2)(bb) [^{F67}or (bc)] 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 Court against the amount of the compensation directed to be paid.
- (1F) On an appeal under any of subsections (1A) to (1E), 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.
- (1G) A decision of the Court under subsection (1A), (1B), (1C), (1D), (1E) or (1F) shall be final.]

(2) Where

- [^{F68}(a)] the Tribunal has exercised the power conferred by section 53(6) to direct that its decision shall take effect on the date on which it is intimated to the solicitor concerned, the solicitor may, within 21 days of that date, apply to the Court for an order varying or quashing the direction in so far as it relates to the date of taking effect [^{F69};
- (b) the Tribunal has ordered the revocation of the recognition under section 34(1A) of an incorporated practice, the incorporated practice may within 21 days of the date when the order is intimated to it apply to the court for an order varying (subject to the limit of 60 days referred to in subsection (6A) of section 53) the direction under that subsection;]
- [^{F70}(c) the Tribunal has exercised the power conferred by section 53(6B) to direct that its order shall take effect on the day on which it is intimated to the solicitor, firm of solicitors or incorporated practice concerned, the solicitor, firm of solicitors or incorporated practice may, before the expiry of the period of 21 days beginning with that day, apply to the court for an order varying or quashing the direction in so far as it relates to the day on which the order takes effect];

and on any such application the Court may make the order applied for or such other order with respect to the matter as it thinks fit.

[^{F71}(2A) In subsections (1D) and (1E), “complainer” has the same meaning as in section 42ZA.

(2B) ^{F63}

(2C) ^{F63}]

Textual Amendments

- F63** S. 54(1)(2B)(2C) repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 195, 210, 211, Sch. 20 para. 1(13), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2008/1436, [art. 3](#)
- F64** S. 54(1A)-(1G) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 57\(1\)\(a\)](#), 82 (with s. 77); S.S.I. 2008/311, [art. 2](#)
- F65** Words in s. 54(1C) inserted (1.5.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 139\(2\)](#), 150(2); S.S.I. 2011/180, [art. 4\(a\)](#)
- F66** Words in s. 54(1D) inserted (1.5.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 139\(2\)](#), 150(2); S.S.I. 2011/180, [art. 4\(a\)](#)

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- F67** Words in s. 54(1E) inserted (1.5.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 139(2), 150(2)**; S.S.I. 2011/180, art. 4(a)
- F68** “(a)” inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 29(b)**
- F69** “;” and s. 54(2)(b) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 29(b)**
- F70** S. 54(2)(c) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 57(1)(b), 82** (with s. 77); S.S.I. 2008/311, **art. 2**
- F71** S. 54(2A)-(2C) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 57(1)(c), 82** (with s. 77); S.S.I. 2008/311, **art. 2**

Modifications etc. (not altering text)

- C6** S. 54 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}

[^{F72}**54A Appeals from decisions of Tribunal: unsatisfactory professional conduct**

- (1) A solicitor in respect of whom a decision has been made by the Tribunal under section 53ZB(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the Court against the decision.
- (2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53ZB to which this subsection applies is intimated to him, appeal to the Court against the decision.
- (3) Subsection (2) applies to the following decisions of the Tribunal under section 53ZB—
 - (a) a decision under subsection (1)(a) quashing the Council's determination upholding the complaint;
 - (b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the solicitor pay compensation;
 - (c) a decision under subsection (1)(f) directing the solicitor to pay compensation;
 - (d) a decision under subsection (2)(b) not to direct the solicitor to pay compensation;
 - (e) a decision under subsection (2)(c) confirming the Council's decision not to uphold the complaint;
 - (f) a decision under subsection (3) confirming the Council's decision not to direct the solicitor to pay compensation;
 - (g) a decision under subsection (4) quashing the Council's direction that the solicitor pay compensation or varying the amount of compensation directed to be paid.
- (4) On an appeal under subsection (1) or (2), 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 under subsection (4) shall be final.
- (6) In this section, “complainer” has the same meaning as in section 42ZA.]

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Textual Amendments

F72 S. 54A inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 53(4), 82** (with s. 77); [S.S.I. 2008/311](#), **art. 2**

The Court

55 Powers of Court

- (1) In the case of professional misconduct by any solicitor the Court may—
- (a) cause the name of that solicitor to be struck off the roll; or
 - (b) suspend the solicitor from practice as a solicitor for such period as the Court may determine; or
 - ^{F73}(ba) suspend the solicitor from exercising any right of audience held by him by virtue of section 25A for such period as the court may determine; or
 - (bb) revoke any right of audience so acquired by him; or]
 - ^{F74}(bc) where the Court considers that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the misconduct; or]
 - (c) fine the solicitor ^{F75}[an amount not exceeding £10,000]; or
 - (d) censure him; and in any of those events,
 - (e) find him liable in any expenses which may be involved in the proceedings before the Court.
- (2) Subject to subsection (3), a decision of the Court under this section shall be final.
- (3) A solicitor whose name has been struck off the roll in pursuance of an order made by the Court under subsection (1), may apply to the Court for an order directing his name to be restored to the roll and the Court may make such order.
- ^{F76}(3A) A solicitor whose rights of audience under section 25A have been revoked in pursuance of an order made by the court under subsection (1) may apply to the court for an order restoring those rights, and the court may make such order.]
- (4) An application under subsection (3) shall be by way of petition and intimation of any such petition shall be made to the Tribunal who shall be entitled to appear and to be heard in respect of the application.
- ^{F77}(5) The Scottish Ministers may by order made by statutory instrument—
- (a) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bc) of subsection (1) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate;
 - (b) amend paragraph (c) of subsection (1) 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.
- (6) A statutory instrument containing an order under—
- (a) subsection (5)(a) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament;

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(b) subsection (5)(b) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(7) In this section, “complainer” has the same meaning as in section 42ZA.]

[^{F78}(8) ^{F79}.....]

Textual Amendments

F73 S. 55(1)(ba)(bb) 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(12)(a)**; S.I. 1991/1252, art. 3, **Sch.1**

F74 S. 55(1)(bc) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(2)(a)(i)**, 82 (with s. 77); S.S.I. 2008/311, **art. 2**

F75 Words in s. 55(1)(c) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(2)(a)(ii)**, 82 (with s. 77); S.S.I. 2008/311, **art. 2**

F76 S. 55(3A) 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(12)(b)**; S.I. 1991/1252, art. 3, **Sch.1**

F77 S. 55(5)-(7) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(2)(b)**, 82 (with s. 77); S.S.I. 2008/311, **art. 2**

F78 S. 55(8) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(21)** (with s. 77); S.S.I. 2008/311, **art. 2**

F79 S. 55(8) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(14), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**

Modifications etc. (not altering text)

C7 S. 55 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}

[^{F80}55A Powers of Court: unsatisfactory professional conduct

(1) In the case of unsatisfactory professional conduct by a solicitor the Court may—

- (a) fine the solicitor an amount not exceeding £2000;
- (b) where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
- (c) find the solicitor liable in any expenses which may be involved in the proceedings before it.

(2) A decision of the Court under subsection (1) shall be final.

(3) The Scottish Ministers may by order made by statutory instrument—

- (a) amend subsection (1)(a) 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 (1)(b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

(4) A statutory instrument containing an order under—

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- (a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
- (b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(5) In this section, “complainer” has the same meaning as in section 42ZA.]

Textual Amendments

F80 S. 55A inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **53(5)**, 82 (with s. 77); S.S.I. 2008/311, **art. 2**

56 Saving for jurisdiction of courts.

Except as otherwise expressly provided, nothing in this Part shall affect the jurisdiction exercisable by the Court, or by any inferior court, over solicitors.

Modifications etc. (not altering text)

C8 S. 56 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}

56A Further provision as to compensation awards.

F81

Textual Amendments

F81 S. 56A repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 195, 210, 211, Sch. 20 para. 1(15), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**

Status:

Point in time view as at 02/07/2012.

Changes to legislation:

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