



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

Powers of Council to intervene

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 [^{F1}or an incorporated practice], and, on consideration of the report of the investigation, the Council are satisfied—

- (a) that the solicitor [^{F2}or, as the case may be, the incorporated practice] has failed. . . ^{F3} to comply with the provisions of those rules, and
- (b) that, [^{F4}, 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 [^{F5}; 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
 - (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 [^{F6}or, as the case may be, of the incorporated practice]; and the

Status: Point in time view as at 01/01/2015. This version of this provision has been superseded.

Changes to legislation: Solicitors (Scotland) Act 1980, Section 41 is up to date with all changes known to be in force on or before 11 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)

Court, on consideration of the said report and after giving the solicitor [^{F7}or, as the case may be, the incorporated practice] an opportunity of being heard, may appoint a judicial factor on [^{F8}such] estate, or do otherwise as seems proper to it.

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. 19(a)**
- F2** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(b)**
- F3** Words repealed by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1)(2), Sch. 1 para. 13, **Sch. 2**
- F4** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(c)**
- F5** 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)**
- F6** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(e)**
- F7** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(f)**
- F8** 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)

- C1** [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}

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