



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

Protection of clients

44 Professional indemnity.

- (1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors [^{F1}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 [^{F2}an authorised insurer];
 - (c) require solicitors or any specified class of solicitors [^{F1}and incorporated practices or any specified class thereof] to take out and maintain insurance with [^{F2}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 [^{F3}and incorporated practices or any class of incorporated practices] to make payments to any such fund;

Status: Point in time view as at 01/12/2001. This version of this provision has been superseded.

Changes to legislation: Solicitors (Scotland) Act 1980, Section 44 is up to date with all changes known to be in force on or before 02 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)

- (c) may require solicitors or any class of solicitors [^{F3}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 [^{F3}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 [^{F3}or, as the case may be, it] has failed to comply may be taken against him [^{F3}or, as the case may be, it] by the Society or by insurers;
 - (g) may specify circumstances in which solicitors [^{F3}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 [^{F4} 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
 - (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 [^{F5}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]
- [^{F6}(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.]

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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. 22\(a\)](#)
- F2** Words in s. 44(1)(b)(c) substituted (19.11.1992) by 1992/2890, reg. 12(2)
- F3** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 22\(b\)](#)
- F4** Definition in s. 44(5) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 223(2)
- F5** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 22\(c\)](#)
- F6** [S. 44\(6\)](#) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 223(3)

Modifications etc. (not altering text)

- C1** [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}

Status:

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