

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

SCHEDULES

SCHEDULE 1

PART I

INCORPORATION OF SOLICITORS' PRACTICES

Solicitors (Scotland) Act 1980 c. 46

- 1 In section 16(1) (appeal to Court of Session against decisions of Council in relation to practising certificates)—
- (a) after the word “where” there shall be inserted “ (a) ”; and
 - (b) after the word “applicant” there shall be inserted “;”,
 - (b) the Council refuse to recognise a body corporate as being suitable in terms of section 34(1A)(b), the body corporate”.
- 2 In section 18 (suspension of practising certificates)—
- (a) after subsection (1) there shall be inserted the following subsection—

“(1A) If—

 - (a) an administration or winding up order, or an appointment of a provisional liquidator, liquidator, receiver or judicial factor has been made in relation to the incorporated practice; or
 - (b) a resolution has been passed for the voluntary winding-up of an incorporated practice (other than a resolution passed solely for the purposes of reconstruction or amalgamation of the incorporated practice with another incorporated practice),

the recognition under section 34(1A) of the incorporated practice shall be thereby revoked.”;
 - (b) after subsection (3) there shall be inserted the following subsection—

“(3A) On the occurrence of the circumstances mentioned in—

 - (a) paragraph (a) of subsection (1A), the administrator, provisional liquidator, liquidator, receiver or, as the case may be, judicial factor appointed in relation to the incorporated practice;
 - (b) paragraph (b) of subsection (1A), the incorporated practice shall immediately intimate that fact to the Council.”.
- 3 In section 21(3) (definition of “consultant” in relation to requirement upon consultants to hold practising certificates)—
- (a) after the word “who” there shall be inserted “ (a) ”;

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- (b) after the word “name”, where thirdly occurring, there shall be inserted—
 - “(b) not being a director of an incorporated practice, causes or permits his name to be associated with that incorporated practice.”.

- [^{F14} In section 26 (offence for solicitors to act as agents for unqualified persons)—
- (a) in subsection (1)—
 - (i) after the word “who” there shall be inserted the words “ or incorporated practice which ”;
 - (ii) in each of paragraphs (b) and (d) after the word “his” there shall be inserted “ or, as the case may be, its ”;
 - (b) in subsection (3) there shall be inserted at the end the words “ but “unqualified person” does not include an incorporated practice ”.]

Textual Amendments

F1 Sch. 1 Pt. I para. 4 repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), Sch. 9

^{F25}

Textual Amendments

F2 Sch. 1 Pt. I para. 5 repealed (17.3.1993) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), s. 74, Sch. 9; SI 1993/641, art. 3, Sch.

- 6 In section 28 (disqualified solicitors not to seek employment without informing employer)—
- (a) after the word “practice” where thirdly occurring, there shall be inserted the words “ or by an incorporated practice ”;
 - (b) after the word “him” there shall be inserted the words “ or, as the case may be, it ”.

- 7 In section 30 (liability for fees of another solicitor)—
- (a) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
 - (b) after that word, where secondly and thirdly occurring, there shall be inserted the words “ or incorporated practice ”;
 - (c) after the word “he” in each place where it occurs, there shall be inserted the words “ or, as the case may be, it ”;
 - (d) after the word “solicitor’s” there shall be inserted the words “ or incorporated practice’s ”.

- 8 Section 31 (offence for unqualified persons to pretend to be solicitors or notaries public) shall be renumbered as subsection (1) of that section and—
- (a) in that subsection (as so renumbered) there shall be inserted at the end of the following—
 - “In this section, “unqualified person” does not include an incorporated practice”;
 - (b) after that subsection there shall be inserted the following subsections—

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

“(2) Any person (including a body corporate) who either by himself or together with others, wilfully and falsely—

- (a) pretends to be an incorporated practice;
- (b) takes or uses any name, title, addition or description implying that he is an incorporated practice,

shall be guilty of an offence.

(3) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of the director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”.

9 In section 32(2) (persons to whom offence of preparing certain documents does not apply) there shall be inserted at the end the following—

“; or

- (e) an incorporated practice.”.

10 In section 33 (unqualified persons not entitled to fees etc.) there shall be inserted at the end—

“This section does not apply to an incorporated practice.”.

11 After section 33 there shall be inserted the following section—

“33A Privilege of incorporated practices from disclosure etc.

(1) Any communication made to or by an incorporated practice in the course of its acting as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the body had at all material times been a solicitor acting for the client.

(2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, shall, with any necessary modifications, have effect in relation to an incorporated practice as it has effect in relation to a solicitor.”.

12 In section 34 (rules as to professional practice, conduct and discipline)—

- (a) in subsection (1) at the end there shall be inserted the words “ and incorporated practices ”;
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Rules made under this section may—

- (a) provide as to the management and control by—
 - (i) solicitors holding practising certificates or their executors;
 - (ii) other incorporated practices

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals and firms practising 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;
 - (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.
 - (c) after subsection (4) there shall be inserted the following subsections—
 - (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.

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- (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.”.
- 13 In section 35(1) (accounts rules) after the word “solicitors”, in each place where it occurs, there shall be inserted the words “ and incorporated practices ”.
- 14 In section 36 (interest on client’s money)—
- (a) in subsection (1)—
 - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
 - (ii) after the word “his” there shall be inserted the words “ or, as the case may be, by the incorporated practice in its ”;
 - (iii) after the word “solicitor’s” there shall be inserted the words “ or, as the case may be, the incorporated practice’s ”;
 - (b) in subsection (2) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”;
 - (c) in subsection (3)—
 - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or incorporated practice ”;
 - (ii) after the word “solicitor”, where lastly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
 - (iii) after the word “his” there shall be inserted the words “ or, as the case may be, its ”;
 - (d) in subsection (4) after the word “client” there shall be inserted the words “ or an incorporated practice and its client ”.
- 15 In section 37 (accountant’s certificates)—
- (a) in subsection (2) after the word “solicitor” there shall be inserted the words “ and incorporated practice ”;
 - (b) in subsection (3) after the word “firm” there shall be inserted the words “ or of an incorporated practice ”;
 - (c) in subsection (5)—
 - (i) in paragraph (a) after the word “who” there shall be inserted the words “ or incorporated practice which ”, after the word “firm” there shall be substituted the words “ or, as the case may be, of the incorporated practice ” and after the word “them” there shall be inserted the words “ or, as the case may be, it ”;
 - (ii) in paragraph (b), after the word “solicitor” there shall be inserted the words “ or incorporated practice ” and after the word “practice” there shall be inserted the words “ or, as the case may be, it has not ”;
 - (d) in subsection (6)—
 - (i) in paragraph (a)(iii) after the word “solicitors” there shall be inserted the words “ or incorporated practices ”;

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- (ii) after the word “he” there shall be inserted the words “ or, as the case may be, an incorporated practice which satisfies the Council that it ”;
 - (e) in subsection (7)—
 - (i) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”;
 - (ii) after the word “him” there shall be inserted the words “ or, as the case may be, it ”.
- 16 In section 38 (powers of Council where dishonesty alleged)—
 - (a) in subsection (1)—
 - (i) after the word “his”, where first occurring, there shall be inserted the words “ or an incorporated practice or any employee thereof ”;
 - (ii) after the word “firm” there shall be inserted the words “ or, as the case may be, such incorporated practice ”;
 - (b) in subsection (2)—
 - (i) in paragraph (a), there shall be inserted at the end the words “ or, as the case may be, such incorporated practice ”;
 - (ii) in paragraph (b), there shall be inserted at the end the words “ 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 its employees. ”.
- 17 In section 39 (Council’s powers where delay alleged)—
 - (a) in subsection (1)—
 - (i) after the word “solicitor” there shall be inserted the words “ or an incorporated practice ”;
 - (ii) after the word “firm” there shall be inserted the words “ or, as the case may be, it ”;
 - (iii) after the word “employees” there shall be inserted the words “ 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 ”;
 - (iv) after the word “solicitor” where secondly occurring, there shall be inserted the words “ or, as the case may be, incorporated practice ”;
 - (b) in subsection (2)—
 - (i) after the word “solicitor”, where first and lastly occurring there shall be inserted the words “ or, as the case may be, incorporated practice ”;
 - (ii) after the word “he” there shall be inserted the words “ or, as the case may be, it ”;
 - (iii) after the word “firm” there shall be inserted the words “ or, as the case may be, to that incorporated practice. ”.
- 18 In section 40 (Council’s powers where failure to comply with accounts rules etc.)—
 - (a) in subsection (1)—
 - (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or incorporated practice ”;
 - (ii) after the word “solicitor”, where secondly and thirdly occurring, there shall be inserted the words “ or, as the case may be, incorporated practice ”;

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- (iii) after the word “his” there shall be inserted the words “ or, as the case may be, its ”;
 - (iv) after the word “section”, where lastly occurring, there shall be inserted “ (a) ”;
 - (v) for the words “and the certificate” there shall be substituted the following “; 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 ”;
 - (b) in subsection (2)—
 - (i) after the word “he” there shall be inserted the words “ or as the case may be, by the incorporated practice that it ”;
 - (ii) after the word “solicitor” where secondly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
 - (iii) for the words from “and” onward there shall be substituted the words “ or solicitors concerned and shall restore to him or them any practising certificate or certificates held by him or them for the practice year then current. ”;
 - (c) in subsection (3) for the word “the”, where secondly occurring, there shall be substituted the word “ a ”.
- 19 In section 41 (appointment of judicial factor)—
- (a) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
 - (b) after the word “solicitor” where secondly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
 - (c) for the words “in connection with his practice as a solicitor” there shall be substituted the words “ , in the case of a solicitor, in connection with his practice as such ”;
 - (d) after the word “arise” there shall be inserted the following “; 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”;
 - (e) after the word “solicitor”, where fourthly occurring, there shall be inserted the words “ or, as the case may be, of the incorporated practice ”;
 - (f) after the word “solicitor”, where fifthly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
 - (g) for the words “the solicitor’s” there shall be substituted the word “ such ”.
- 20 In section 42 (distribution of sums in client bank account)—
- (a) in subsection (1)—
 - (i) after the word “(2)” there shall be inserted the words “ or (2A) ”;

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- (ii) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
 - (iii) after the word “him”, where first and thirdly occurring, there shall be inserted the words “ or, as the case may be, by it ”;
 - (iv) after the word “clients”, where firstly occurring, there shall be inserted the words “ or, as the case may be, by it on behalf of its clients ”;
 - (v) after the word “solicitor”, where secondly occurring, there shall be inserted the words “ or, as the case may be, the incorporated practice ”;
 - (vi) after the word “behalf”, where secondly occurring, there shall be inserted the words “ or, as the case may be, by it on their behalf ”;
 - (vii) after the word “him”, where lastly occurring, there shall be inserted the words “ or, as the case may be, by it ”;
- (b) after subsection (2) there shall be inserted the following subsection—
- “(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)”;
- (c) in subsection (3)—
- (i) after the word “solicitor”, where first occurring, there shall be inserted the words “ or an incorporated practice ”;
 - (ii) after the word “his”, where first occurring, there shall be inserted the words “ or, as the case may be, its ”;
 - (iii) after the word “client”, where secondly occurring, there shall be inserted the words “ or, as the case may be, by the incorporated practice on that behalf ”;
 - (iv) after the word “him” there shall be inserted the words “ or, as the case may be, by it ”;
 - (v) after the word “name” there shall be inserted the words “ or, as the case may be, by the incorporated practice in its own name ”.
- 21 In section 42 (Guarantee Fund)—
- (a) in subsection (2) after the words “part of” there shall be inserted “ (a) ” and at the end there shall be inserted “; 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”;
- (b) in subsection (3), after paragraph (c), there shall be added the following—
- “(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,

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- secretary or other employee of the incorporated practice in connection with the practice”;
- (c) in subsection (7)(c) there shall be inserted at the end the following “ or in the employment of an incorporated practice ”.
- 22 In section 44 (professional indemnity)—
- (a) in subsection (1)—
- (i) after the word “solicitors”, where secondly occurring, there shall be inserted the words “ and incorporated practices ”;
- (ii) in paragraph (c) after the word “solicitors”, where secondly occurring, there shall be inserted the words “ and incorporated practices or any specified class thereof ”;
- (b) in subsection (3)—
- (i) in each of paragraphs (b) and (c) after the word “solicitors”, where secondly occurring, there shall be inserted the words “ and incorporated practices or any class of incorporated practices ”;
- (ii) in paragraph (f) after the word “solicitor” there shall be inserted the words “ or incorporated practice ” and after each of the words “he” and “him” there shall be inserted the words “ or, as the case may be, it ”;
- (iii) in paragraph (g) after the word “solicitors” there shall be inserted the words “ and incorporated practices ”;
- (c) in subsection (5) there shall be inserted at the end the words “ 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 ”.
- 23 In section 45 (safeguarding interests of clients of solicitors struck off or suspended)
-
- (a) in subsection (1) at the end there shall be inserted the words “ and, in relation to any incorporated practice, the recognition under section 34(1A) of which is revoked ”;
- (b) in subsection (2)—
- (i) at the beginning there shall be inserted the words “ In the case of a solicitor, ”;
- (ii) after the words “solicitors” there shall be inserted the words “ or incorporated practice ”;
- (c) after subsection (2) there shall be inserted the following subsection—
- “(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.”;
- (d) in subsection (3)—

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- (i) after the word “solicitor” in both places where it occurs, there shall be inserted the words “ or, as the case may be, incorporated practice ”;
- (ii) after the word “he” there shall be inserted the words “ or, as the case may be, any director, manager, secretary or other employee of the incorporated practice ”;
- (e) in subsection (5), after the word “practice” there shall be inserted the words “ or, as the case may be, the recognition under section 34(1A) is revoked. ”.
- 24 In section 47 (restriction on employing solicitor struck off or suspended)—
- (a) in subsection (1)—
- (i) after the word “solicitor”, where secondly occurring, there shall be inserted the words “ and, unless it has such permission, an incorporated practice shall not ”;
- (ii) after the word “his”, where first occurring, there shall be inserted the words “ or, as the case may be, its ”;
- (b) in subsection (3) after the word “solicitor” there shall be inserted the words “ or, as the case may be, incorporated practice ”;
- (c) in subsection (4) at the end there shall be inserted the words “ and if any incorporated practice so acts its recognition under section 34(1A) shall be revoked. ”.
- 25 In section 49 (investigation by lay observer of Society’s treatment of complaints), in subsection (1) after the word “solicitor”, where secondly occurring, there shall be inserted the words “ or about an incorporated practice or an employee thereof ”.
- 26 In section 51(2) (complaints to Discipline Tribunal) after the words “client” there shall be inserted the words “ or an incorporated practice may have failed to comply with any provision of this Act or of rules made under this Act applicable to it ”.
- 27 In section 52(1) (procedure and powers of Discipline Tribunal) there shall be inserted at the end the words “ or an incorporated practice ”.
- 28 In section 53 (powers of Discipline Tribunal)—
- (a) in subsection (1) there shall be inserted at the end—
- “; 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.”
- (b) in subsection (2) (powers of Discipline Tribunal)—
- (i) in paragraphs (c) and (d) after the word “solicitor” there shall be inserted the words “ or, as the case may be, the incorporated practice ”.
- (ii) in paragraph (e) after the word “him” there shall be inserted the words “ or, as the case may be, it ”.
- (iii) after paragraph (e) there shall be added the following—

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- “or
- (f) order that the recognition under section 34(1A) of the incorporated practice be revoked”.
- (c) after subsection (6) (effective date of striking off or suspension of solicitor) there shall be inserted the following subsection—
- “(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.”.
- (d) in subsection (7) after the word “(6)” there shall be inserted the words “or (6A)” and for the words “that subsection” there shall be substituted the words “subsection (6) or, as the case may be, subsection (6A)”.
- 29 In section 54 (appeals by solicitors from decisions of the Discipline Tribunal)—
- (a) in subsection (1) for the word “him” there shall be substituted the words “that person”;
- (b) in subsection (2)—
- (i) after the word “Where” there shall be inserted “(a)”;
- (ii) after the word “effect”, where secondly occurring, there shall be inserted—
- “;
- (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;”
- 30 In section 60 (offence for notaries public to act for unqualified persons) in subsection (2) there shall be inserted at the end the words “but “unqualified person” does not include an incorporated practice”.
- 31 In section 61 (protection of banks)—
- (a) in each of subsections (1) and (2) after the word “solicitor” there shall be inserted the words “or an incorporated practice”;
- (b) in subsection (3) after the word “solicitor”, where first occurring, there shall be inserted the words “or an incorporated practice” and after that word, where secondly occurring, there shall be inserted the words “or, as the case may be, the incorporated practice”.
- 32 In section 64 (service of notices) there shall be inserted at the end the words “or, in the case of an incorporated practice, if it is left at, or delivered or sent by post to, its registered office”.
- 33 In section 65(1) (interpretation) after the definition of “functions” there shall be inserted the following—

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

““incorporated practice” has the meaning given by section 34(1A)(c);”

34 In Schedule 3 (The Scottish Solicitors’ Guarantee Fund)—

(a) in paragraph 1—

(i) after sub-paragraph (2) there shall be inserted the following sub-paragraphs—

“(2A) Sub-paragraphs (1) and (2) do not apply to solicitors who are directors of incorporated practices.

(2B) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund by every incorporated practice in respect of each year during which, or part of which, it is recognised under section 34(1A) a contribution (hereafter referred to as an “annual corporate contribution”) in accordance with the scale of such contributions referred to in sub-paragraph (3).”

(ii) in sub-paragraph (3) there shall be inserted at the end the words “ and the scale of the annual corporate contributions to be so paid, which scale shall be fixed by reference to factors which shall include the number of solicitors who are directors or employees of each of the incorporated practices to which the scale relates. ”;

(iii) in sub-paragraph (4) after the word “solicitor” there shall be inserted the words “ and no annual corporate contribution by an incorporated practice ”;

(iv) in sub-paragraph (5) for the words “a special”, where secondly occurring, there shall be substituted the words “ upon every incorporated practice a contribution (hereafter referred to as a “special corporate contribution”) in accordance with a scale of such contributions fixed by the Council as under sub-paragraph (3), and a special or special corporate ”;

(v) in paragraph 1(8) after the word “solicitors” there shall be inserted the words “ or of an incorporated practice ”;

(b) in paragraph 3(2), after the word “solicitors”, where first occurring, there shall be inserted the words “ and incorporated practices ” and after that word, where secondly occurring, there shall be inserted the words “ or incorporated practice or practices ”;

(c) in paragraph 4(2) after the word “employee” there shall be inserted the words “ or the incorporated practice in question or its employee ”.

(d) in paragraph 5(2) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”.

35 In Schedule 4 (constitution, procedure and powers of Tribunal)—

(a) in paragraph 9—

(i) after the word “solicitor”, where first and secondly occurring, there shall be inserted respectively, the words “ or an incorporated practice ” and “ or the incorporated practice ”; and

(ii) after the word “him” there shall be inserted the words “ or, as the case may be, it ”;

(iii) after the word “solicitor” where thirdly and lastly occurring there shall be inserted, in each case, the words “ or, of failure on the part

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- of the incorporated practice to comply with any provision of this Act or of rules made under this Act ”;
- (b) in paragraph 10 (duty of Discipline Tribunal to give respondent solicitor notice of complaint)—
- (i) after the word “solicitor” there shall be inserted the words “ or incorporated practice ”;
- (ii) after the words “him” and “his” there shall be inserted respectively the words “ or, as the case may be, it ” and “ or, as the case may be, its ”.
- (c) in paragraph 16—
- (i) in each of paragraphs (c) and (d) after the word “solicitor” there shall be inserted the words “ or an incorporated practice ”;
- (ii) after paragraph (d) there shall be added—
- “or
- (e) order that the recognition under section 34(1A) of an incorporated practice be revoked”;
- (iii) for “(d)” where secondly occurring, there shall be substituted “ (e) ”;
- (iv) after the word “court”, where secondly occurring, there shall be inserted the words “ or under section 53(6A) which has not been varied by the court ”;
- (v) after the word “roll”, where secondly occurring, there shall be inserted the words “ or as to revoking the recognition under section 34(1A) of an incorporated practice ”.

Building Societies Act 1962 (c. 37)

- 36 In section 34(4) (restriction on commissions for introduction of business) after the word “solicitor” there shall be inserted the words “ (including that of an incorporated practice within the meaning of the Solicitors (Scotland) Act 1980) ”.

Legal Aid (Scotland) Act 1967 (c. 43)

- 37 In section 6(3)(a) (exclusion of certain solicitors from giving legal aid) the word “or” immediately preceding sub-paragraph (iii) shall be omitted and after that sub-paragraph there shall be inserted the following—

“or—

- (iv) in the case of a director of an incorporated practice, such conduct on the part of any person who is for the time being a director of the incorporated practice.”.

38

F3

Textual Amendments

- F3** Sch. 1 Pt. I para. 38 repealed by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, Sch. 30 para. 6(1), [Sch. 31](#)

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

Legal Advice and Assistance Act 1972 (c. 50)

- 39 In section 5(2) (definition of “the solicitor” for purposes of rules relating to payment of certain charges or fees), after the word “solicitors”, where first occurring, there shall be inserted the words “ or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980 ”) and after that word, where secondly occurring, there shall be inserted the words “ , incorporated practice ”.

Estate Agents Act 1979 (c. 38)

- 40 In section 1(2)(a) (disapplication of Act to practising solicitors and their employees) after the word “him” there shall be inserted the words “ or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980) or a person employed by it ”.

[^{F4}Income and Corporation Taxes 1988]

Textual Amendments

- F4** Heading substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 29 para. 31](#)

- 41 In section [^{F5}745(3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the [Income and Corporation Taxes Act 1988](#)] (saving for solicitors in relation to requirement to furnish certain information to Inland Revenue) any reference to a solicitor shall include a reference to an incorporated practice and any reference to a solicitor’s client shall, in relation to a solicitor who is a director, manager, secretary or employee of an incorporated practice within the meaning of the [Solicitors \(Scotland\) Act 1980](#), be construed as a reference to a client of that practice.

Textual Amendments

- F5** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 29 para. 31](#)

PART II

AMENDMENTS OF LEGAL AID AND SOLICITORS (SCOTLAND)
ACT 1949 AND SOLICITORS (SCOTLAND) ACT 1980

Legal Aid and Solicitors (Scotland) Act 1949 (c. 63)

- 1 Section 25 (provisions as to taking apprentices) is hereby repealed.

Solicitors (Scotland) Act 1980 (c. 46)

- 2 In section 6 (admission as solicitor)—
- (a) in subsection (1)(b) the words “by affidavit or otherwise” are hereby repealed.
 - (b) after subsection (3) there shall be inserted the following subsections—

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

“(3A) The Council may petition the court for the admission as a solicitor of an applicant who has complied with the requirements of subsection (1) above; and, where it does so it shall lodge the petition not later than one month after the applicant has first so complied.

(3B) The Court shall, on a petition being made to it under subsection (3A) above, make an order admitting the applicant as a solicitor.”.

3 Section 15(2)(a) (Council to have discretion as to issue of practising certificates where applicant still has to serve post-qualifying year of practical training) is hereby repealed.

4 In section 35(1) (power to make accounts rules)—

- (a) the word “and” immediately preceding paragraph (d) shall be omitted;
- (b) after that paragraph there shall be added the following—

“; 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.”.

5 Section 48 (restriction on number of apprentices) is hereby repealed.

6 After section 62 there shall be inserted the following section—

“62A Council’s power to recover expenses incurred under section 38, 45 or 46.

- (1) Without prejudice to the Society’s entitlement under section 46(4) to recover expenses, the Council shall be entitled to recover from a solicitor or incorporated practice in respect of whom it has taken action under section 38, 45 or 46, any expenditure reasonably incurred by it in so doing.
- (2) Expenditure incurred in taking action under section 38 is recoverable under subsection (1) above only where notice has been served under paragraph 5(2) of Schedule 3 in connection with that action and—
 - (a) no application has been made in consequence under paragraph 5(4) of that Schedule; or
 - (b) the Court, on such an application, has made a direction under paragraph 5(5) of that Schedule.”.

7 In Schedule 1 (constitution etc. of the Law Society of Scotland)—

- (a) for paragraph 6 (subscriptions) there shall be substituted the following paragraphs—

“6 Subject to paragraph 7, every member of the Society shall, for each year, pay to the Society such subscription as may be fixed from time to time by the Society in general meeting.

6A The subscription payable under paragraph 6 by a practising member (or the proportion of it so payable, calculated by reference to the number of months remaining in the practice year) shall be

Status: Point in time view as at 01/09/2009.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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)

- paid at the time of submission of his application for a practising certificate.”;
- (b) in paragraph 7 (subscription in first three years of enrolment)—
- (i) the word “annual”, in both places where it occurs, is hereby repealed;
 - (ii) after the word “year” there shall be inserted the words “ or part thereof”; and
 - (iii) there shall be added at the end the words “ (reduced, in the case of a solicitor first included in the roll for only part of a year, in that year proportionately) ”; and
- (c) after the said paragraph 7 there shall be inserted the following paragraphs—
- “7A The Society shall have power, subject to paragraphs 7B to 7D, to impose in respect of any year a special subscription on all members of the Society of such amount and payable at such time and for such specified purpose as it may determine.
- 7B The Society may determine that an imposition under paragraph 7A shall not be payable by any category of member or shall be abated as respects any category of member.
- 7C An imposition under paragraph 7A or a determination under that paragraph or paragraph 7B may be made only in general meeting.
- 7D No imposition may be made under paragraph 7A above unless a majority of those members entitled to attend and vote at the general meeting at which it is proposed has, whether by proxy or otherwise, voted in favour of its being made.”.
- 8 In Schedule 3 (the Scottish Solicitors Guarantee Fund)—
- (a) in paragraph 1(1) (annual contributions to Guarantee Fund) the words “not exceeding the sum of £25” are hereby repealed.
 - (b) in paragraph 1(3) (Council to fix amount of contributions for each year by previous 31 July) for the words “31 July” there shall be substituted the words “ 30 September ”; and
 - (c) paragraph 1(7) (limit to special contributions to Guarantee Fund) is hereby repealed.

Status:

Point in time view as at 01/09/2009.

Changes to legislation:

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, SCHEDULE 1 is up to date with all changes known to be in force on or before 30 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.