



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## CHAPTER 40

### LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) ACT 1990

#### PART I

#### CHARITIES

##### *Recognition of charities*

- 1 Information as to recognised charities.
- 2 Non-recognised bodies.
- 3 Designated religious bodies.

##### *Charities accounts*

- 4 Duty to keep accounting records.
- 5 Annual accounts and report.

##### *Supervision of charities*

- 6 Powers of Lord Advocate to investigate charities and to suspend trustees.
- 7 Powers of Court of Session to deal with management of charities.
- 8 Disqualification of persons concerned in the management or control of recognised bodies.

##### *Reorganisation of public trusts*

- 9 Reorganisation of public trusts by the court.
- 10 Small trusts.

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- 11 Expenditure of capital.

*Dormant charities*

- 12 Dormant accounts of charities in banks, etc.

*Miscellaneous*

- 13 Appointment of trustees.  
14 Alteration of purposes and winding-up of charitable companies.

*Interpretation*

- 15 Interpretation of Part I, regulations and orders.

**PART II**

LEGAL SERVICES

*Conveyancing and executry services*

- 16 The Scottish Conveyancing and Executry Services Board.  
17 Qualified conveyancers.  
18 Executry practitioners.  
19 Executry services by recognised financial institutions.  
20 Professional misconduct, inadequate professional services, etc.  
21 Board's intervention powers.  
22 Disclosure of documents etc.  
23 Interpretation of sections 16 to 22.

*Rights of audience*

- 24 Rights of audience in the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary.  
25 Rights to conduct litigation and rights of audience.  
26 Consideration of applications made under section 25.  
27 Exercise of rights to conduct litigation and rights of audience.  
28 Surrender of rights to conduct litigation and rights of audience.  
29 Revocation of rights granted under section 26.  
30 Regulation of right of English, Welsh and Northern Irish practitioners to practise in Scotland.

*Rules of conduct*

- 31 Rules of conduct etc.

*Multi-national practices*

- 32 Multi-national practices.

*Complaints in relation to legal services*

- 33 Complaints in relation to legal services.

*Scottish legal services ombudsman*

- 34 Scottish legal services ombudsman.

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- 34A Ombudsman's final report and recommendations.
- 34B Advisory functions of ombudsman.

*Judicial appointments*

- 35 Judicial appointments.

*Solicitors' and counsel's fees*

- 36 Solicitors' and counsel's fees.

*Miscellaneous and supplementary*

- 37 Admission of solicitors and notaries public.
- 38 Availability of legal aid in relation to services provided under this Act.
- 39 Removal of certain restrictions on the borrowing of the court process.
- 40 Advisory and supervisory functions of the Director.
- 41 Investigatory powers of the Director.
- 42 Review of rules approved by the Secretary of State.
- 43 Functions of Director in relation to certain rules made under the 1980 Act.
- 44 Interpretation of Part II.

**PART III**

THE LICENSING (SCOTLAND) ACT 1976

*Times of opening*

- 45 Permitted hours.
- 46 Sunday opening of licensed premises.
- 47 Regular extensions of permitted hours.
- 48 Restriction orders.

*Children's certificates*

- 49 Children's certificates.
- 50 Suspension of children's certificate.

*Transfer of licences*

- 51 Transfer of licences.

*Wholesale selling of alcoholic liquor*

- 52 Wholesale selling of alcoholic liquor.

*Observations by Chief Constable*

- 53 Observations by chief constable in relation to applications.

*Supervision of sales by persons over 18*

- 54 Supervision of sales of liquor in off-sale premises by persons 18 or over.

*Presumption as to contents of containers*

- 55 Presumption as to contents of containers.

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## PART IV

### MISCELLANEOUS REFORMS

#### *Evidence by children in criminal trials*

- 56 Evidence of children through television link in criminal proceedings.
- 57 Transfer of cases in which child's evidence is to be given through television link.
- 58 Identification of accused by child.
- 59 Interpretation of sections 56, 57 and 58.

#### *Sheriff court jurisdiction*

- 60 Criminal jurisdiction of sheriff court.

#### *Treatment of offenders*

- 61 Probation and community service orders and supervision and care of persons on probation or released from prison etc.
- 62 Supervised attendance orders as alternative to imprisonment on fine default.

#### *Drug trafficking confiscation orders*

- 63 Registration and enforcement of external confiscation orders.

#### *Matrimonial interdicts*

- 64 Matrimonial interdicts.

#### *Homelessness*

- 65 Homelessness.

#### *Arbitration*

- 66 UNCITRAL Model Law on International Commercial Arbitration.

#### *Judicial factors*

- 67 Further provision as to discharge of judicial factors.

#### *Avoidance of civil liability by non-contractual notice*

- 68 Amendment of Unfair Contract Terms Act 1977.

#### *Liability in respect of services to injured persons*

- 69 Future services to injured person.

#### *Blood and other samples in civil proceedings*

- 70 Blood and other samples in civil proceedings.

#### *Powers of attorney*

- 71 Effect of mental incapacity on powers of attorney etc.

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### *Execution of documents by companies*

72 Execution of documents by companies.

#### **PART V**

#### GENERAL

73 Finance.

74 Amendments and repeals.

75 Citation, commencement and extent.

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### SCHEDULES

#### SCHEDULE 1 — Scottish Conveyancing and Executry Services Board Part I — CONSTITUTION, DUTIES, POWERS AND STATUS

##### *Constitution*

- 1 The Scottish Conveyancing and Executry Services Board shall be a...
- 2 The Board shall not be regarded as the servant or...
- 3 The Board shall consist of— (a) a chairman; and
- 4 In making appointments under paragraph 3 above the Secretary of...
- 5 (1) Subject to paragraph 6 below, a member of the...
- 6 (1) The chairman or any other member of the Board...

##### *Remuneration*

- 7 (1) The Board may— (a) pay such remuneration to their...

##### *Staff*

- 8 The Board may employ such officers and servants as they...
- 9 (1) The Board shall make, in respect of such of...

##### *Proceedings*

- 10 (1) The Board may regulate their own proceedings.

##### *Performance of functions*

- 11 (1) Subject to the provisions of this Schedule, the Board...
- 12 Neither the Board nor any of their members, officers or...

##### *Accounts*

- 13 (1) The Board shall, in respect of each financial year,...

##### *Annual report*

- 14 The Board shall, as soon as possible after 31st March...

##### *Appeals*

- 15 (1) The Board shall establish a procedure under which they...

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### *Compensation*

- 16 (1) The Board shall establish and maintain a fund for...

### *Parliamentary disqualification*

- 17 In Part II of Schedule 1 to the House of...  
 Part II — POWERS OF INVESTIGATION  
 18 The Board may exercise the power conferred by paragraph 19...  
 19 The Board may give notice in writing to a practitioner...  
 20 If a practitioner fails to comply with a notice under...

### SCHEDULE 2 — Publication of applications made under section 25

- 1 Any professional or other body making an application under section...  
 2 Any person may make written representations concerning any draft scheme...  
 3 At the same time as an application under section 25...  
 4 An advertisement such as referred to in paragraph 3 above...

### SCHEDULE 3 — Scottish Legal Services Ombudsman

- 1 The Scottish legal services ombudsman (the “ombudsman”) shall hold and...  
 2 The Secretary of State may give general directions to the...  
 3 (1) The Secretary of State may with the consent of...  
 4 The Secretary of State may appoint staff for the ombudsman...  
 5 Neither the ombudsman nor his staff are, in such capacity,...  
 6 The Secretary of State shall pay the expenses of the...  
 7 Without prejudice to section 33(3) of this Act, a professional...  
 8 Every such professional organisation shall, severally, consider any report which...  
 9 The ombudsman shall make an annual report of the discharge...  
 9A The ombudsman may, in addition to making a report under...  
 9B The ombudsman shall provide the Secretary of State with such...  
 10 The Secretary of State shall lay any report made to...  
 11 In Part III of Schedule 1 to the House of...

### SCHEDULE 4 — Judicial Appointments

#### *Appointments of sheriffs principal, sheriffs and solicitors as judges of the Court of Session*

- 1 The following categories of person shall, in accordance with this...  
 2 Paragraph 1(a) above shall not confer any eligibility for appointment...  
 3 Paragraphs 1 and 2 above are without prejudice to any...

#### *Further provision as to Inner House and exchequer causes*

- 4 (1) The Court of Session Act 1988 shall be amended...

### *Temporary judges*

- 5 Any person who is eligible under— (a) paragraph 1 above;...  
 6 Subject to paragraph 7 below, a person appointed as a...  
 7 Subject to paragraph 8 below, a person shall not, by...  
 8 A person appointed to be a temporary judge of the...  
 9 Notwithstanding the expiry of any period for which a person...

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- 10 The Secretary of State may pay to a person appointed...
- 11 The appointment of a person to act as a temporary...

*Amendments to the Small Landholders (Scotland) Act 1911 (c.49)*

- 12 (1) The Small Landholders (Scotland) Act 1911 shall be amended...

**SCHEDULE 5 — Applications for Children’s Certificates**

- 1 Applications may be made to a licensing board in accordance...
- 2 The holder of a public house licence or hotel licence...
- 3 (1) On any application for the grant of a children’s...
- 4 A copy of every application made under this Schedule shall...
- 5 A licensing board shall not, within two years of its...
- 6 An application for a new public house licence or hotel...
- 7 The grant of an application for a children’s certificate shall...
- 8 The grant of an application for a children’s certificate made...
- 9 If an application for a children’s certificate is made at...
- 10 The grant of an application for a children’s certificate shall...

**SCHEDULE 6 — Supervised Attendance Orders: Further Provisions**

- 1 (1) A court shall not make a supervised attendance order...
- 2 (1) A supervised attendance order shall— (a) specify the locality...
- 3 (1) An offender in respect of whom a supervised attendance...
- 4 (1) If at any time while a supervised attendance order...
- 5 (1) Where a supervised attendance order is in force in...
- 6 (1) The Secretary of State may make rules for regulating...
- 7 The Secretary of State shall lay before Parliament each year,...
- 8 In section 27 of the Social Work (Scotland) Act 1968...
- 9 (1) In this Schedule— “the appropriate court”, in relation to...

**SCHEDULE 7 — UNCITRAL**

— MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

Chapter 1 — GENERAL PROVISIONS

**ARTICLE 1**

SCOPE OF APPLICATION

- (1) This Law applies to international commercial arbitration, subject to...

**ARTICLE 2**

DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Law: “arbitration” means any arbitration...

**ARTICLE 3**

RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:

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#### **ARTICLE 4**

##### WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this Law...

#### **ARTICLE 5**

##### EXTENT OF COURT INTERVENTION

In matters governed by this Law, no court shall intervene...

#### **ARTICLE 6**

##### COURT FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE, SUPERVISION AND ENFORCEMENT

The functions referred to in articles 11(3), 11(4), 13(3), 14,...  
Chapter II — ARBITRATION AGREEMENT

#### **ARTICLE 7**

##### DEFINITION AND FORM OF ARBITRATION AGREEMENT

(1) “Arbitration agreement” is an agreement by the parties to...

#### **ARTICLE 8**

##### ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in...

#### **ARTICLE 9**

##### ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

(1) It is not incompatible with an arbitration agreement for...  
Chapter III — COMPOSITION OF ARBITRATION TRIBUNAL

#### **ARTICLE 10**

##### NUMBER OF ARBITRATORS

(1) The parties are free to determine the number of...

#### **ARTICLE 11**

##### APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his...



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## ARTICLE 12

### GROUNDS FOR CHALLENGE

- (1) When a person is approached in connection with his...

## ARTICLE 13

### CHALLENGE PROCEDURE

- (1) The parties are free to agree on a procedure...

## ARTICLE 14

### FAILURE OR IMPOSSIBILITY TO ACT

- (1) If an arbitrator becomes de jure or de facto...

## ARTICLE 15

### APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13...  
Chapter IV — JURISDICTION OF ARBITRAL TRIBUNAL

## ARTICLE 16

### COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

- (1) The arbitral tribunal may rule on its own jurisdiction,...

## ARTICLE 17

### POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

- (1) Unless otherwise agreed by the parties, the arbitral tribunal...  
Chapter V — CONDUCT OF ARBITRAL PROCEEDINGS

## ARTICLE 18

### EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party...

## ARTICLE 19

### DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to the provisions of this Law, the parties...

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## ARTICLE 20

### PLACE OF ARBITRATION

(1) The parties are free to agree on the place...

## ARTICLE 21

### COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in...

## ARTICLE 22

### LANGUAGE

(1) The parties are free to agree on the language...

## ARTICLE 23

### STATEMENTS OF CLAIM AND DEFENCE

(1) Within the period of time agreed by the parties...

## ARTICLE 24

### HEARINGS AND WRITTEN PROCEEDINGS

(1) Subject to any contrary agreement by the parties, the...

## ARTICLE 25

### DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient...

## ARTICLE 26

### EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(1) Unless otherwise agreed by the parties, the arbitral tribunal:...

## ARTICLE 27

### COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of...

Chapter VI — MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

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## ARTICLE 28

### RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance...

## ARTICLE 29

### DECISION MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision...

## ARTICLE 30

### SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute,...

## ARTICLE 31

### FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall...

## ARTICLE 32

### TERMINATION OF PROCEEDINGS

(1) The arbitral proceedings are terminated by the final award...

## ARTICLE 33

### CORRECTION AND INTERPRETATION OF AWARD AND MAKING OF ADDITIONAL AWARD

(1) Within thirty days of receipt of the award, unless...

### Chapter VII — RECOURSE AGAINST AWARD

## ARTICLE 34

### APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

(1) Recourse to a court against an arbitral award may...

### Chapter VIII — RECOGNITION AND ENFORCEMENT OF AWARDS

## ARTICLE 35

### RECOGNITION AND ENFORCEMENT

(1) An arbitral award, irrespective of the country in which...

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## ARTICLE 36

### GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of...

#### SCHEDULE 8 — Amendment of Enactments

##### Part I — AMENDMENTS TO THE LICENSING (SCOTLAND) ACT 1976

- 1 The Licensing (Scotland) Act 1976 shall be amended as follows....
- 2 In subsection (2) of section 5 (restriction on power of...
- 3 In subsection (6) of that section after the words “(a)...
- 4 In subsection (3) of section 6 (voting by chairman) the...
- 5 In section 16 (persons who may object to licence applications)—...
- 6 In section 17 (grounds for refusal of an application), for...
- 7 In section 18 (giving of reasons for decisions of a...
- 8 In section 21 (issue of licences)— (a) in subsection (1),...
- 9 In section 33 (occasional licence for premises other than licensed...
- 10 In subsection (1) of section 34 of that Act (occasional...
- 11 (1) Section 39 (appeals against the decisions of licensing boards)...
- 12 In section 64— (a) in subsection (1), after the words...
- 13 In each of subsections (1) and (2) of section 69...
- 14 In section 70 (children in premises in respect of which...
- 15 In section 97 (restrictions on supply of alcoholic liquor on...
- 16 In paragraph (j) of section 108 (grounds of objection to...
- 17 In subsection (1) of section 109 (cancellation of certificate of...
- 18 In section 139 (interpretation) after subsection (4) there shall be...

##### Part II — MISCELLANEOUS

##### *The Probate and Legacy Duties Act 1808 (c. 149)*

- 19 In section 38 of the Probate and Legacy Duties Act...

##### *The Confirmation of Executors (Scotland) Act 1823 (c. 98)*

- 20 (1) In section 3 of the Confirmation of Executors (Scotland)...

##### *The Judicial Factors Act 1849 (c. 51)*

- 21 (1) In section 5 (factor to lodge monies in one...

##### *The Confirmation of Executors (Scotland) Act 1858 (c. 56)*

- 22 (1) In section 2 of the Confirmation of Executors (Scotland)...

##### *The Promissory Oaths Act 1868 (c. 72)*

- 23 In the second part of the Schedule to the Promissory...

##### *The Intestates Widows and Children (Scotland) Act 1875 (c. 41)*

- 24 (1) In section 3 of the Intestates Widows and Children...

##### *The Small Testate Estates (Scotland) Act 1876 (c. 24)*

- 25 (1) In section 3 of the Small Testate Estates (Scotland)...

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*The Sheriff Courts (Scotland) Act 1971 (c.58)*

26 (1) For subsection (1) of section 33 (Sheriff Court Rules...

*The Criminal Procedure (Scotland) Act 1975 (c. 21)*

27 (1) The Criminal Procedure (Scotland) Act 1975 shall be amended...

*The Community Service by Offenders (Scotland) Act 1978 (c. 49)*

28 In section 4 of the Community Service by Offenders (Scotland)...

*The Solicitors (Scotland) Act 1980 (c. 46)*

29 (1) The Solicitors (Scotland) Act 1980 shall be amended as...

*The Criminal Justice (Scotland) Act 1980 (c. 62)*

30 (1) For section 76 of the Criminal Justice (Scotland) Act...

*The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)*

31 (1) In section 6(3)(e) of the Matrimonial Homes (Family Protection)...

*The Representation of the People Act 1983 (c. 2)*

32 Section 42(3)(b) of the Representation of the People Act 1983...

*The Companies Act 1985 (c. 6)*

33 (1) The Companies Act 1985 shall be amended as follows....

*The Family Law (Scotland) Act 1985 (c.37)*

34 In section 8(1) of the Family Law (Scotland) Act 1985...

*The Insolvency Act 1986 (c. 45)*

35 Section 53(3) of the Insolvency Act 1986 (execution of instrument...

*The Legal Aid (Scotland) Act 1986 (c. 47)*

36 (1) In subsection (3) of section 4 (Scottish Legal Aid...

*The Criminal Justice (Scotland) Act 1987 (c. 41)*

37 In section 6(1) of the Criminal Justice (Scotland) Act 1987...

*The Court of Session Act 1988 (c. 36)*

38 For section 48 (limited right of audience of solicitor before...

*The Antarctic Minerals Act 1989 (c. 21)*

39 In subsection (2) of section 7 of the Antarctic Minerals...

SCHEDULE 9 — Repeals

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