



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

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Conveyancing and executry services*

#### **16 The Scottish Conveyancing and Executry Services Board.**

- (1) There shall be a Board, to be known as the Scottish Conveyancing and Executry Services Board, which shall have the principal functions of regulating—
  - (a) the provision of conveyancing services by persons other than—
    - (i) solicitors; and
    - (ii) persons mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate and confirmations); and
  - (b) the provision of executry services by persons other than—
    - (i) solicitors;
    - (ii) persons referred to in paragraph (a)(ii) above; and
    - (iii) recognised financial institutions.
- (2) The Secretary of State may, with the consent of the Treasury, make grants to the Board towards expenses incurred, or to be incurred, by them in connection with—
  - (a) the initial establishment of the Board; and
  - (b) the discharge by the Board of their functions.
- (3) Any grant made under subsection (2) above may be made subject to such terms and conditions (including conditions as to repayment) as the Secretary of State, with the consent of the Treasury, thinks fit and the Secretary of State may, with such consent, vary such terms and conditions after the grant is made.

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- (4) Part I of Schedule 1 to this Act (constitution, duties, powers and status of the Board) shall have effect in relation to the Board.

#### Commencement Information

**II** S. 16 wholly in force at 1.4.1991. See s. 75(2) and S.I. 1991/822, art. 3, Schedule.

### 17 Qualified conveyancers.

- (1) The Board shall establish and maintain a register of qualified conveyancers, which shall be available for inspection by any person without charge.
- (2) Where, on an application made to them by a natural person in such form as they may determine, and on the provision of such information in connection with the application as they consider necessary, the Board are satisfied that the applicant—
- (a) is a fit and proper person to provide conveyancing services as a qualified conveyancer; and
  - (b) complies with the requirements of rules made under subsection (3) below,
- the Board shall grant the application and shall enter the applicant's name in the register of qualified conveyancers.
- (3) The Board shall, subject to subsection (15) below and after such consultation as they consider appropriate, make rules as to the requirements to be satisfied by any person applying for registration under subsection (2) above, and such rules shall, in particular, make provision as to—
- (a) educational qualifications; and
  - (b) practical training.
- (4) Where the Board refuse an application under subsection (2) above they shall give the applicant written reasons for their decision.
- (5) Where the Board refuse an application under subsection (2) above the applicant may, within 21 days of the date on which the Board's decision is intimated to him, apply to the Board to review their decision.
- (6) Where the Board have reviewed a decision mentioned in subsection (5) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to him, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (7) Where a qualified conveyancer informs the Board that he intends to provide conveyancing services to the public for a fee, gain or reward and—
- (a) satisfies the Board that he has made adequate arrangements for the satisfaction of any successful claims against him arising out of such provision by him of such services; or
  - (b) participates in the arrangements made by the Board for that purpose under subsection (13)(b) below,
- the Board shall make an annotation on the register against his name to the effect that he is an independent qualified conveyancer; and where he subsequently informs them that he intends to cease providing such services to the public for a fee, gain or reward, they shall remove that annotation.

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- (8) Any person or body other than—
- (a) an independent qualified conveyancer; or
  - (b) a solicitor; or
  - (c) an incorporated practice within the meaning of section 65 of the 1980 Act (interpretation); or
  - (d) a multi-disciplinary practice within the meaning of that section,
- who employs a qualified conveyancer under a contract of employment for the purpose of providing conveyancing services for persons other than himself or, as the case may be, themselves, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) Where a qualified conveyancer applies to the Board to remove his name from the register the Board shall—
- (a) where, in the case of an independent qualified conveyancer, they are satisfied that he has made adequate arrangements with respect to the business he then has in hand; and
  - (b) in any other case, without further enquiry,
- grant the application and amend the register accordingly.
- (10) The Board shall send to the Keeper of the Registers of Scotland—
- (a) as soon as practicable after 1st April in each year, a list of all qualified conveyancers; and
  - (b) written notice of any subsequent change to the register of qualified conveyancers.
- (11) The Secretary of State shall, subject to section 40 of this Act and after consultation with such persons as he considers appropriate, by regulations make such provision as he thinks fit with a view to maintaining appropriate standards of conduct and practice of independent qualified conveyancers, and such regulations shall, in particular, make provision with respect to—
- (a) the manner in which such conveyancers conduct the provision of conveyancing services;
  - (b) conflicts of interest;
  - (c) the contractual obligations of such conveyancers;
  - (d) the holding of clients' money; and
  - (e) the disclosure of and accounting for commissions.
- (12) Regulations under subsection (11) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (13) The Board shall, in relation to the provision of conveyancing services by independent qualified conveyancers, and subject to subsection (14) below—
- (a) establish and maintain suitable procedures for dealing with any complaints made to them in connection with the provision of conveyancing services by such conveyancers; and
  - (b) make suitable arrangements (whether by means of insurance policies or otherwise) to secure that any successful claims made against such a conveyancer in connection with the provision of conveyancing services are satisfied.

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- (14) Before establishing procedures or making arrangements under subsection (13)(a) or, as the case may be, (b) above, the Board shall submit particulars of the proposed procedures or arrangements to the Secretary of State for his approval.
- (15) Before making any rules under subsection (3) above, the Board shall submit the rules to the Secretary of State for his approval, and before approving any such rules the Secretary of State shall consult—
- (a) the Director in accordance with section 40 of this Act; and
  - (b) such other persons as he considers appropriate.
- (16) It shall be the duty of—
- (a) an independent qualified conveyancer to comply with the requirements of regulations made under subsection (11) above and any direction of the Board under section 20(2)(a) or (b) of this Act; and
  - (b) the Board to ensure such compliance.
- (17) Where, under or by virtue of any enactment—
- (a) a warrant of registration is required for recording any deed in the General Register of Sasines; or
  - (b) an application for registration is required for registering an interest in land in the Land Register of Scotland,
- any reference in that or any other enactment or any subordinate instrument to such a warrant or application being signed by a solicitor or agent shall be construed as including a reference to the warrant or application being signed by a qualified conveyancer, and any enactment or subordinate instrument making provision as to the form of such a warrant or application shall, with the necessary modifications, apply in relation to a qualified conveyancer.
- (18) A qualified conveyancer who signs a warrant or application by virtue of subsection (17) above shall, in addition to any matters required to be specified after his signature by any enactment or subordinate instrument, specify the independent qualified conveyancer, solicitor or incorporated practice by whom he is employed or, where he is himself an independent qualified conveyancer, his designation as such.
- (19) Any person who—
- (a) wilfully and falsely—
    - (i) pretends to be a qualified conveyancer; or
    - (ii) takes or uses any name, title, addition or description implying that he is a qualified conveyancer; or
  - (b) being a qualified conveyancer, provides conveyancing services at a time when his registration as such is suspended,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (20) Any qualified conveyancer not registered as an independent qualified conveyancer under subsection (7) above who—
- (a) wilfully and falsely—
    - (i) pretends to be an independent qualified conveyancer; or
    - (ii) takes or uses any name, title, addition or description implying that he is an independent qualified conveyancer; or
  - (b) provides conveyancing services to the public for a fee, gain or reward,

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (21) Where an offence under subsection (19)(a) above is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—

- (a) any director, secretary or other similar officer of the body corporate; or
- (b) any person who was 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.

- (22) Where an offence under subsection (19)(a) above is committed by a partnership and is proved to have been committed with the consent or connivance of a partner, he (as well as the partnership) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- (23) Any independent qualified conveyancer who provides conveyancing services upon the account of, or for the profit of, any person other than—

- (a) a solicitor;
- (b) an incorporated practice within the meaning of section 65 of the 1980 Act;
- (c) a multi-disciplinary practice within the meaning of that section; or
- (d) another independent qualified conveyancer,

knowing that person not to be a solicitor, incorporated practice, multi-disciplinary practice or independent qualified conveyancer, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (24) Any rule imposed by any professional or other body which purports to prevent a solicitor or any person mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate etc.) from—

- (a) acting as an employee of an independent qualified conveyancer in connection with the provision of conveyancing services; or
- (b) acting on behalf of an independent qualified conveyancer in connection with the provision of such services,

shall be of no effect.

#### Commencement Information

- I2** s. 17 wholly in force at 1.3.1997; s. 17 not in force at Royal Assent see s. 75(2); s. 17(3)(11)-(15) in force at 30.9.1991 by [S.I. 1991/2151](#), [art. 3](#), Sch.; s. 17 in force at 1.3.1997 in so far as not already in force by [S.I. 1996/2894](#), [art. 3](#), [Sch](#) (as amended by [S.I. 1996/2966](#), [art. 2](#))

## 18 Executry practitioners.

- (1) The Board shall establish and maintain a register of executry practitioners, which shall be available for inspection by any person without charge.
- (2) Where, on an application made to them in such form as they may determine, the Board are satisfied that the applicant fulfils the conditions specified in subsection (3) below, the Board shall grant the application and shall enter the applicant's name in the register of executry practitioners.

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- (3) The conditions referred to in subsection (2) above are that the applicant—
  - (a) is a fit and proper person to provide executry services;
  - (b) complies with the requirements prescribed by regulations made under subsection (10) below; and
  - (c) maintains suitable arrangements (whether by means of insurance policies or otherwise) to satisfy any successful claims made against it in connection with the provision of executry services.
- (4) The Board may require an applicant under subsection (2) above to provide such further information in connection with the application as they consider necessary.
- (5) Where the Board—
  - (a) grant an application under subsection (2) above, they may attach such conditions as they may determine, and shall record any such conditions against the applicant's name in the register;
  - (b) refuse such an application, they shall give the applicant written reasons for their decision.
- (6) Where the Board—
  - (a) grant an application under subsection (2) above subject to conditions; or
  - (b) refuse such an application,the applicant may, within 21 days of the date on which the Board's decision is intimated to it, apply to the Board to review their decision.
- (7) Where the Board have reviewed a decision mentioned in subsection (6) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to it, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (8) Where an executry practitioner applies to the Board to remove its name from the register the Board shall, if they are satisfied that the practitioner has made adequate arrangements with respect to the business it then has in hand, grant the application and amend the register accordingly.
- (9) The Board shall send to the Keeper of the Registers of Scotland and to each sheriff clerk—
  - (a) as soon as practicable after 1st April in each year, a list of all executry practitioners; and
  - (b) written notice of any subsequent change to the register of executry practitioners.
- (10) The Secretary of State shall, subject to section 40 of this Act and after consultation with such persons as he considers appropriate, by regulations make such provision as he thinks fit with a view to maintaining appropriate standards of conduct and practice of executry practitioners and such regulations shall, in particular, make provision as to educational qualifications and practical training.
- (11) Regulations under subsection (10) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (12) It shall be the duty of—

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- (a) an executry practitioner to comply with the requirements of regulations made under subsection (10) above and any direction of the Board under section 20(2)(a) or (b) of this Act; and
- (b) the Board to ensure such compliance.
- (13) Any person who—
- (a) wilfully and falsely—
- (i) pretends to be an executry practitioner; or
- (ii) takes or uses any name, title, addition or description implying that he is an executry practitioner; or
- (b) being an executry practitioner, provides executry services at a time when his registration as such is suspended,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (14) Where an offence under subsection (13) above is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, secretary or other similar officer of the body corporate, or
- (b) any person who was 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.
- (15) Where an offence under subsection (13) above is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the consent or connivance of a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### Commencement Information

- I3** S. 18 wholly in force 1.3.1997; s. 18 not in force at Royal Assent see s. 75(2); s. 18(10)-(11) in force at 30.9.1991 by [S.I. 1991/2151](#), [art. 3](#), Sch.; s. 18 in force at 1.3.1997 in so far as not already in force by [S.I. 1996/2894](#) art. 3, Sch. (as amended by [S.I. 1996/2966](#), [art. 2](#))

PROSPECTIVE

#### <sup>F1</sup>19 Executry services by recognised financial institutions.

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#### Textual Amendments

- F1** S. 19 repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), [Sch. 4 para. 12\(5\)](#); [S.S.I. 2003/384](#), art. 2(d)

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VALID FROM 01/03/1997

## 20 Professional misconduct, inadequate professional services, etc.

- (1) Where, after such inquiry as they consider appropriate (whether or not following a complaint to them) and after giving the practitioner concerned an opportunity to make representations, the Board are satisfied that a practitioner—
- (a) is guilty of professional misconduct;
  - (b) has provided inadequate professional services;
  - (c) has failed to comply with regulations made under section 17(11) or 18(10) of this Act; or
  - (d) has been convicted of a criminal offence rendering him no longer a fit and proper person to provide conveyancing services as a qualified conveyancer or, as the case may be, executry services as an executry practitioner,
- they may take such of the steps set out in subsection (2) below as they think fit and shall, without prejudice to subsection (6) below, intimate their decision to the practitioner by notice in writing.
- (2) The steps referred to in subsection (1) above are—
- (a) to determine that the amount of fees and outlays which the practitioner may charge in respect of such services as the Board may specify shall be—
    - (i) nil; or
    - (ii) such amount as the Board may specify in the determination,
 and to direct the practitioner to comply, or secure compliance, with such of the requirements set out in subsection (5) below as appear to them to be necessary to give effect to the determination;
  - (b) to direct the practitioner to secure the rectification at his or its own expense of any such error, omission or other deficiency arising in connection with the services as the Board may specify;
  - (c) to attach conditions (or, as the case may be, further conditions) to the registration of the practitioner or to vary any condition so attached;
  - (d) to suspend or revoke that registration;
  - (e) subject to subsection (3) below, to impose on the practitioner a fine not exceeding £10,000;
  - (f) in a case where the practitioner has provided inadequate professional services, to direct the practitioner to pay to the client by way of compensation such sum, not exceeding £1,000, as the Board may specify;
  - (g) to censure the practitioner; and
  - (h) to make a report of the Board's findings to any other person exercising functions with respect to—
    - (i) the practitioner; or
    - (ii) any person employed by or acting on behalf of the practitioner in connection with the provision of the services.
- (3) The Board shall not impose a fine under subsection (2)(e) above where, in relation to the subject matter of the Board's inquiry, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than two years.



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- (4) Any fine imposed under subsection (2)(e) above shall be treated for the purposes of [F<sup>2</sup>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.
- (5) The requirements referred to in subsection (2)(a) above are—
- (a) to refund, whether in whole or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the practitioner in connection with the services; and
  - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (6) Where the Board make a direction under subsection (2)(a), (b) or (f) above they shall, by notice in writing, require the practitioner to which the direction relates to give, within such period being not less than 21 days as the notice may specify, an explanation of the steps which he or it has taken to comply with the direction.
- (7) Where a practitioner—
- (a) fails to comply with a notice under subsection (6) above; or
  - (b) complies with such a notice but the Board are not satisfied as to the steps taken by the practitioner to comply with the direction to which the notice relates,
- the Board may apply to the Court of Session for an order requiring the practitioner to comply with the direction to which the notice relates within such time as the court may order.
- (8) Where the Board take a step set out in subsection (2)(c) or (d) above and—
- (a) the period specified in subsection (11)(a) or (b) below has expired without an application for review or, as the case may be, an application to the Court of Session having been made; or
  - (b) where such an application is made, the matter is finally determined in favour of the Board's decision or the application is withdrawn,
- they shall amend the register of executry practitioners or, as the case may be, the register of qualified conveyancers accordingly.
- (9) The Board shall—
- (a) subject to subsection (10) below, publish every decision taken by them under subsection (1) above (including a decision that they are not satisfied as to the matters mentioned in subsection (1)(a) to (d)); and
  - (b) make available a copy of every decision published under paragraph (a) above for inspection by any person without charge.
- (10) In carrying out their duty under subsection (9) above, the Board may refrain from publishing any names or other information which would, in their opinion, damage or be likely to damage the interests of persons other than—
- (a) the practitioner to whom the decision relates; or
  - (b) where the practitioner is an individual, his partners; or
  - (c) his or their families,
- but where they so refrain, they shall publish their reasons for so doing.
- (11) Where the Board take a step set out in subsection (2)(a) to (g) above, the practitioner concerned may—

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- (a) within 21 days of the date on which the Board’s decision is intimated to it or him, apply to the Board to review their decision; and
  - (b) within 21 days of the date on which the outcome of such review is intimated to it or him, apply to the Court of Session, which may make such order in the matter as it thinks fit.
- (12) Part II of Schedule 1 to this Act (Board’s powers of investigation for the purposes of this section and section 21) shall have effect.
- (13) The Secretary of State, after consulting the Board, may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend subsection (2)(f) above by substituting for the sum for the time being specified in that provision such other sum as he considers appropriate.
- (14) The taking of any steps under subsection (2) above shall not be founded upon in any proceedings for the purpose of showing that the practitioner in respect of whom the steps were taken was negligent.
- (15) A direction under subsection (2)(f) above to a practitioner to pay compensation to a client shall not prejudice any right of that client to take proceedings against that practitioner for damages in respect of any loss which he alleges he has suffered as a result of that practitioner’s negligence, and any sum directed to be paid to that client under that provision may be taken into account in the computation of any award of damages made to him in any such proceedings.
- (16) 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 subsection (2)(e) above by substituting for the amount for the time being specified in that provision such other amount as appears to him to be justified by a change in the value of money.
- (17) In this section “executry practitioner” and “qualified conveyancer” respectively include any executry practitioner or qualified conveyancer whether or not it or he was registered as such at the time when the subject matter of the Board’s inquiry occurred and notwithstanding that subsequent to that time it or he has ceased to be so registered.

#### Textual Amendments

**F2** Words in s. 20(4) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 78

VALID FROM 01/03/1997

## 21 Board’s intervention powers.

- (1) The powers conferred on the Board by this section may be exercised if, after such inquiry (if any) as the Board consider appropriate, it appears to them to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an independent qualified conveyancer or an executry practitioner (each of whom is in this section referred to as a “relevant practitioner”).

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- (2) The Board may, in particular, exercise any such power where it appears to them that a relevant practitioner—
  - (a) is no longer a fit and proper person to provide conveyancing services or, as the case may be, executry services;
  - (b) has ceased, for whatever reason, to provide such services; or
  - (c) has failed, or is likely to fail, to comply with regulations made under section 17(11) or, as the case may be, section 18(10) of this Act.
- (3) The Board may direct the relevant practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
  - (a) any assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent qualified conveyancer or, as the case may be, an executry practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (4) The Board may direct the relevant practitioner to transfer to the Board, or to such persons (in this section referred to as “the trustees”) as may be specified in the direction—
  - (a) all assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent qualified conveyancer or, as the case may be, an executry practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (5) A relevant practitioner to whom a direction is given may, within 21 days of the date on which the direction is received by him, apply to the Court of Session, which may make such order in the matter as it thinks fit.
- (6) A relevant practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to apply to the Court of Session under subsection (5) above).
- (7) If, on an application to the Court of Session by the Board, the court is satisfied—
  - (a) that a relevant practitioner has failed, within a reasonable time, to comply with any direction given to him; or
  - (b) that there is a reasonable likelihood that a relevant practitioner will so fail, the court may make an order requiring the practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.
- (8) Any assets which have been transferred as a result of a direction given under subsection (4) above shall be held by the Board, or by the trustees, on trust for the client or, as the case may be, the practitioner concerned.
- (9) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the Board.
- (10) If the Board have reasonable cause to believe that a relevant practitioner or an employee of a relevant practitioner has been guilty of dishonesty resulting in pecuniary loss to a client of the relevant practitioner, they may apply to the Court of Session for an order that no payment be made by any bank, building society or other body named in the order out of any bank, building society or other account or any

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sum deposited in the name of the relevant practitioner without the leave of the court and the court may make such an order.

(11) Any direction under this section—

- (a) shall be given in writing;
- (b) shall state the reason why it is being given;
- (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the relevant practitioner); and
- (d) may be varied or revoked by a further direction given by the Board.

(12) In this section—

“assets” includes any sum of money (in whatever form and whether or not in any bank, building society or other account) and any book, account, deed or other document held by the relevant practitioner on his own behalf in connection with his business as a relevant practitioner or on behalf of the client concerned; and

“independent qualified conveyancer” and “executory practitioner” respectively include any independent qualified conveyancer or executory practitioner whether or not he was registered as such at the time when the matter in relation to which the Board exercise or propose to exercise their powers under this section arose and notwithstanding that subsequent to that time he has ceased to be so registered.

VALID FROM 01/03/1997

## **22 Disclosure of documents etc.**

(1) Any communication made to or by—

- (a) an independent qualified conveyancer or an executory practitioner in the course of his or its acting as such for a client; or
- (b) a recognised financial institution in the course of providing executory services for a client,

shall in any action or proceedings in any court be protected from disclosure on the ground of confidentiality between client and professional legal adviser in like manner as if the conveyancer, practitioner or institution 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 confidentiality between client and professional legal adviser could be maintained, shall, with any necessary modifications, have effect in relation to—

- (a) an independent qualified conveyancer;
- (b) an executory practitioner; and
- (c) a recognised financial institution in relation to the provision of executory services,

as it has effect in relation to a solicitor.

**Status:** Point in time view as at 01/04/1996. This version of this part contains provisions that are not valid for this point in time.

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#### Commencement Information

- I4** S. 22 partly in force; s. 22 not in force at Royal Assent see 75(2); s. 22(1)(a)(2)(a)(b) in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. and S.I. 1996/2966, art. 2

### 23 Interpretation of sections 16 to 22.

In sections 16 to 22 of this Act and this section, except where the context otherwise requires—

“the Board” means the Scottish Conveyancing and Executry Services Board;

“conveyancing services” means the preparation of writs, contracts and other documents in connection with the transfer of heritable property and loans secured over such property, and services ancillary thereto, but does not include any services—

- (a) relating to the arranging of a loan; or
- (b) falling within section 1(1)(a) of the <sup>M1</sup>Estate Agents Act 1979;

“executry practitioner” means a person registered under section 18 in the register of executry practitioners;

“executry services” means the drawing and preparation of papers on which to found or oppose an application for a grant of confirmation of executors and services in connection with the administration, ingathering, distribution and winding up of the estate of a deceased person by executors, but does not include anything which constitutes investment business within the meaning of the <sup>M2</sup>Financial Services Act 1986;

“inadequate professional services” means professional services which are in any respect not of the quality which could reasonably be expected of a competent practitioner; and references to the provision of inadequate professional services shall be construed as including references to not providing professional services which such a practitioner ought to have provided;

“independent qualified conveyancer” means a person registered as such under section 17(7) in the register of qualified conveyancers;

“practitioner” means an executry practitioner or a qualified conveyancer;

“qualified conveyancer” means a person registered under section 17 in the register of qualified conveyancers; and

“recognised financial institution” has the meaning given to it in section 19(2).

#### Commencement Information

- I5** S. 23 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.

#### Marginal Citations

**M1** 1979 c. 38.

**M2** 1986 c. 60.

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### *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.**

After section 25 of the 1980 Act there shall be inserted the following section—

### **“25A 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.**

- (1) Without prejudice to section 250 (right of audience of solicitor before single judge) of the Criminal Procedure (Scotland) Act 1975 and section 48(2)(b) (extension of rights of audience by act of sederunt) of the Court of Session Act 1988, a solicitor who—
  - (a) seeks a right of audience in, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council or, on the other hand, the High Court of Justiciary; and
  - (b) has satisfied the Council as to the requirements provided for in this section,
 shall have a right of audience in those courts or, as the case may be, that court.
- (2) The requirements mentioned in subsection (1), in relation to the courts or, as the case may be, the court in which a solicitor seeks a right of audience, are that—
  - (a) he has completed, to the satisfaction of the Council, a course of training in evidence and pleading in relation to proceedings in those courts or that court;
  - (b) he has such knowledge as appears to the Council to be appropriate of—
    - (i) the practice and procedure of; and
    - (ii) professional conduct in regard to,
 those courts or that court; and
  - (c) he has satisfied the Council that he is, having regard among other things to his experience in appropriate proceedings in the sheriff court, otherwise a fit and proper person to have a right of audience in those courts or that court.
- (3) Where a solicitor has satisfied the Council as to the requirements of subsection (2) in relation to the courts or, as the case may be, the court in which he seeks a right of audience the Council shall make an appropriate annotation on the roll against his name.
- (4) The Council shall make rules under this section as to—
  - (a) the matters to be included in, the methods of instruction to be employed in, and the qualifications of the person who will conduct, any course of training such as is mentioned in subsection (2)(a); and
  - (b) the manner in which a solicitor’s knowledge of the practice and procedure and professional conduct mentioned in subsection (2)(b) is to be demonstrated,

and separate rules shall be so made in relation to, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council and, on the other hand, the High Court of Justiciary.

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**Status:** Point in time view as at 01/04/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part II is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date.

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- (5) The Council shall make rules of conduct in relation to the exercising of any right of audience held by virtue of this section.
- (6) Where a solicitor having a right of audience in any of the courts mentioned in subsection (1) is instructed to appear in that court, those instructions shall take precedence before any of his other professional obligations, and the Council shall make rules—
  - (a) stating the order of precedence of those courts for the purposes of this subsection;
  - (b) stating general criteria to which solicitors should have regard in determining whether to accept instructions in particular circumstances; and
  - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any of those courts by a solicitor holding an appropriate right of audience is so represented,and for the purposes of rules made under this subsection the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate jurisdiction, may be treated as separate courts.
- (7) Subsection (6) does not apply to an employed solicitor whose contract of employment prevents him from acting for persons other than his employer.
- (8) Subject to subsections (9) and (10), the provisions of section 34(2) and (3) apply to rules made under this section as they apply to rules made under that section and, in considering any rules made by the Council under subsection (5), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights of audience by all practitioners appearing before the Court of Session and the High Court of Justiciary.
- (9) The Council shall, after any rules made under subsection (4) have been approved by the Lord President, submit such rules to the Secretary of State, and no such rules shall have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved them.
- (10) The Council shall, after any rules made under subsection (5) have been approved by the Lord President, submit such rules to the Secretary of State.
- (11) Where the Secretary of State considers that any rule submitted to him under subsection (10) would directly or indirectly inhibit the freedom of a solicitor to appear in court or undertake all the work preparatory thereto he shall consult the Director in accordance with section 64A.
- (12) The Council may bring into force the rules submitted by them to the Secretary of State under subsection (10) with the exception of any such rule which he has, in accordance with section 64B, refused to approve.
- (13) Nothing in this section affects the power of any court in relation to any proceedings—
  - (a) to hear a person who would not otherwise have a right of audience before the court in relation to those proceedings; or
  - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before the

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court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.

(14) Where a complaint has been made that a solicitor has been guilty of professional misconduct in the exercise of any right of audience held by him by virtue of this section, the Council may, or if so requested by the Lord President shall, suspend him from exercising that right pending determination of that complaint under Part IV.

(15) Where a function is conferred on any person or body by this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.”.

#### Commencement Information

**16** S. 24 wholly in force at 3.6.1991. See s. 75(2) and S.I. 1991/1252, art. 3, [Schedule 1](#).

VALID FROM 19/03/2007

#### **25 Rights to conduct litigation and rights of audience.**

- (1) Any professional or other body may, for the purpose of enabling any of their members who is a natural person to acquire—
- (a) rights to conduct litigation on behalf of members of the public; and
  - (b) rights of audience,
- make an application in that regard to the Lord President and the Secretary of State.
- (2) An application under subsection (1) above shall include a draft scheme—
- (a) specifying—
    - (i) the courts;
    - (ii) the categories of proceedings;
    - (iii) the nature of the business; and
    - (iv) the rights to conduct litigation and the rights of audience,
 in relation to which the application is made;
  - (b) describing—
    - (i) the training requirements which the body would impose upon any of their members who sought to acquire any right such as is mentioned in subsection (1) above; and
    - (ii) the code of practice which they would impose upon their members in relation to the exercise by those members of any rights acquired by them by virtue of this section,
 in the event of the application being granted; and
  - (c) proposing arrangements for—
    - (i) the indemnification of members of the public against loss suffered by them through the actings of the body’s members in the exercise by those members of any rights acquired by them by virtue of this section; and



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(ii) the treatment by the body of complaints made to them by members of the public in relation to the actings of members of the body exercising rights acquired by virtue of this section,

and shall state that the body have complied with the provisions of Schedule 2 to this Act.

- (3) A code of practice such as is mentioned in subsection (2)(b)(ii) above shall include provision with regard to revoking, suspending or attaching conditions to the exercise of any right acquired by a member of the body by virtue of this section in consequence of a breach by that member of that code of practice; and shall in particular include provision enabling the body to comply with the provisions of section 27(4) of this Act.
- (4) A draft scheme submitted under this section shall also include the proposals of the body in relation to such other matters as may be prescribed by the Secretary of State in regulations made under this section.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Schedule 2 shall have effect in relation to the publication of applications made under subsection (1) above.

VALID FROM 19/03/2007

## 26 Consideration of applications made under section 25.

- (1) The Lord President shall consider the provision made in any draft scheme submitted to him under section 25(1) of this Act in relation to the matters mentioned in section 25(2); and the Secretary of State shall, subject to subsection (5) below and to section 40 of this Act, consider the provision so made in section 25(2)(b) and (c).
- (2) In considering the code of practice included in the draft scheme by virtue of section 25(2)(b)(ii), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights to conduct litigation and rights of audience by all practitioners in relation to the court or, as the case may be, the courts, mentioned in the application.
- (3) The Lord President and the Secretary of State shall—
  - (a) consult each other in considering a draft scheme submitted to them under section 25(1); and
  - (b) consider any written representations timeously made to them under Schedule 2 to this Act,
 and may, either jointly or severally, make preliminary observations to the body concerned in relation to that draft; and the body may make such adjustments to the draft as appear to them to be appropriate, and the Lord President and the Secretary of State (who shall, in accordance with section 40, consult the Director in respect of any adjustments made in relation to the matters mentioned in section 25(2)(b) or (c)) shall thereafter consider the draft scheme as so adjusted.

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- (4) In considering a draft scheme under subsection (1) or (3) above, the Lord President and the Secretary of State shall have regard to whether the provisions of the draft scheme are such as—
- (a) to achieve; and
  - (b) to ensure the maintenance of, appropriate standards of conduct and practice by persons who may acquire rights to conduct litigation or rights of audience in the event of the draft scheme being approved.
- (5) In relation to any code of practice such as is mentioned in section 25(2)(b)(ii), the duty of the Secretary of State under subsection (1) above is limited to a consideration of any provision of such a code as would, in his view, directly or indirectly inhibit the freedom of a member of the body concerned to undertake all the work necessary for the preparation of a case or for the presentation of a case before the court, other than such a provision which has that effect only by reason of the provision made in the draft scheme with respect to the matters mentioned in section 25(2)(a).
- (6) After they have considered a draft scheme under subsections (1) and (3) above, if the Lord President and the Secretary of State—
- (a) are satisfied with the draft scheme, the Lord President shall grant the application, and shall so inform the body;
  - (b) are not satisfied with the scheme, the Lord President shall refuse the application, and shall so inform the body, giving written reasons for the refusal,
- and the Lord President shall send a copy of the letter granting or refusing the application to any person who has made representations in relation to the draft scheme under Schedule 2 to this Act.
- (7) Where the Lord President has granted an application under subsection (6)(a) above, in relation to—
- (a) civil proceedings, the Court of Session may by act of sederunt; and
  - (b) criminal proceedings, the High Court of Justiciary may by act of adjournal,
- make such provision for giving effect to the scheme as appears to it to be appropriate.

VALID FROM 19/03/2007

## **27 Exercise of rights to conduct litigation and rights of audience.**

- (1) Where an application made under section 25 of this Act has been granted under section 26 of this Act, any member of the body concerned who has complied with the terms of the scheme in relation to the matters mentioned in section 25(2)(b)(i), and who appears to the body to be a fit and proper person, shall have the right to conduct litigation or rights of audience to which that compliance entitles him.
- (2) Where a function is, whether expressly or by implication, conferred on any person or body by section 26 or this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.
- (3) Nothing in subsection (1) above affects the power of any court in relation to any proceedings—

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- (a) to hear a person who would not otherwise have a right of audience before that court in relation to those proceedings; or
  - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before that court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.
- (4) Where a complaint has been made that a person has been guilty of professional misconduct in the exercise of any right to conduct litigation or right of audience held by him by virtue of this section, the body of which he is a member may, or if so requested by the Lord President shall, suspend that person from exercising that right pending determination of that complaint by the body.
- (5) Where a person holding a right of audience in any court by virtue of this section is instructed to appear in that court, those instructions shall take precedence before any of his other professional or business obligations, and the code of practice mentioned in section 25(2)(b)(ii) shall include rules—
- (a) stating the order of precedence of courts for the purposes of this subsection;
  - (b) stating general criteria to which members of the body should have regard in determining whether to accept instructions in particular circumstances; and
  - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any court by one of their members holding an appropriate right of audience is so represented,
- and, for the purposes of such rules, the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate jurisdiction, may be treated as separate courts.
- (6) A person exercising any right of audience held by virtue of this section shall have the same immunity from liability for negligence in respect of his acts or omissions as if he were an advocate, and no act or omission on the part of any such person shall give rise to an action for breach of contract in relation to the exercise by him of such a right of audience.
- (7) Any person who wilfully and falsely—
- (a) pretends to have any right to conduct litigation or right of audience by virtue of this section; or
  - (b) where he has any such right, pretends to have any further such right which he does not have; or
  - (c) takes or uses any name, title, addition or description implying that he has any such right or, as the case may be, any further such right,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) For the purposes of section 25, section 26 and this section—
- “right of audience” includes, in relation to any court, any such right exercisable by an advocate; and
  - “right to conduct litigation” means the right to exercise on behalf of a client all or any of the functions, other than any right of audience, which may be exercised by a solicitor in relation to litigation.

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VALID FROM 19/03/2007

## **28 Surrender of rights to conduct litigation and rights of audience.**

- (1) Subject to the provisions of this section, where an application made under section 25 of this Act has been granted under section 26(6) of this Act, the body concerned may apply to the Lord President and the Secretary of State for permission to surrender any entitlement of their members to acquire rights to conduct litigation or rights of audience.
- (2) The Lord President and the Secretary of State shall jointly issue directions as to the requirements with which any body wishing to surrender their members' entitlement will have to comply, and, without prejudice to the generality of the foregoing, any such directions may include provision—
  - (a) where members of a body have acquired rights to conduct litigation or rights of audience, as to the arrangements to be made for the completion of any work outstanding at the time the application is made; and
  - (b) relating to the particular circumstances of a particular body.
- (3) An application under subsection (1) above shall describe the manner in which the body have complied, or will comply, with the directions issued under subsection (2) above.
- (4) Where the Lord President and the Secretary of State are satisfied that the body concerned have complied, or will comply, with the directions issued under subsection (2) above, the Lord President shall grant the application, and shall so inform the body.
- (5) With effect from the date on which an application under subsection (1) above is granted, any member of the body concerned who has acquired rights to conduct litigation or rights of audience by virtue of the scheme shall cease to hold those rights.

VALID FROM 19/03/2007

## **29 Revocation of rights granted under section 26.**

- (1) Where it appears to the Secretary of State that a body has failed to comply with a direction under section 42(6) of this Act, he may by order made by statutory instrument revoke the grant of the application made by that body under section 25 of this Act.
- (2) No instrument shall be made under subsection (1) above unless a draft of the instrument has been laid before and approved by each House of Parliament.
- (3) With effect from the date on which an order under subsection (1) above takes effect, any member of the body concerned who has acquired rights to conduct litigation or rights of audience by virtue of the scheme shall cease to hold those rights.

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### **30 Regulation of right of English, Welsh and Northern Irish practitioners to practise in Scotland.**

- (1) The Secretary of State, after consulting the Lord President, may by regulations prescribe circumstances in which, and conditions subject to which, practitioners who are qualified to practise in England and Wales or Northern Ireland may, in such capacity as may be prescribed, exercise in Scotland—
  - (a) prescribed rights of audience; or
  - (b) prescribed rights to conduct litigation,without being entitled to do so apart from the regulations.
- (2) The Secretary of State, after consulting the Lord President, may by regulations make provision for the purpose of enabling practitioners who are entitled to practise in England and Wales or Northern Ireland to become qualified to practise in Scotland on terms, and subject to conditions, corresponding or similar to those on which practitioners who are entitled to practise in member States may become qualified to practise in Scotland.
- (3) Regulations made under subsection (1) above may, in particular—
  - (a) prescribe any right of audience which may not be exercised by a person in Scotland unless he is instructed to act together with a person who has that right of audience there;
  - (b) prescribe legal services which may not be provided by any person practising by virtue of the regulations;
  - (c) prescribe the title or description which must be used by any person practising by virtue of the regulations;
  - (d) provide for the body by whom and the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified; and
  - (e) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations.
- (4) Regulations made under subsection (1) or (2) above may modify any rule of law or practice which the Secretary of State considers should be modified in order to give effect to the regulations.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “practitioner” means, in relation to England and Wales and Northern Ireland—
  - (a) a barrister or solicitor; and
  - (b) any person falling within such category as may be prescribed in regulations made by the Secretary of State after consultation with the Lord President.

#### **Commencement Information**

**I7** S. 30 wholly in force at 3.6.1991. See s. 75(2) and S.I. 1991/1252, art. 3, [Schedule 1](#)

*Status: Point in time view as at 01/04/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part II is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date.*

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### *Rules of conduct*

#### **31 Rules of conduct etc.**

- (1) Any rule, whether made before or after the coming into force of this section, whereby an advocate is prohibited from forming a legal relationship with another advocate or with any other person for the purpose of their jointly offering professional services to the public shall have no effect unless it is approved by the Lord President and the Secretary of State; and before approving any such rule the Secretary of State shall consult the Director in accordance with section 40 of this Act.
- (2) Where it appears to the Faculty of Advocates that any rule of conduct in relation to the exercise of an advocate's right of audience in the Court of Session is more restrictive than the equivalent rule in relation to the exercise of the equivalent right in the sheriff court, they may submit that rule to the Secretary of State for his approval, and the Secretary of State shall consult the Director in accordance with section 40 of this Act, and thereafter, having—
  - (a) considered any advice tendered to him by the Director;
  - (b) compared the rule applicable in the Court of Session with the equivalent rule applicable in the sheriff court; and
  - (c) considered whether the interests of justice require that there should be such a rule in the Court of Session,
 he may approve or refuse to approve the rule.
- (3) In section 34 of the 1980 Act (rules as to professional practice, conduct and discipline) —
  - (a) at the end of subsection (1A) there shall be inserted—
 

“and

    - (f) make such additional or different provision as the Council think fit in relation to solicitors who, or incorporated practices which, are partners in or directors of multi-disciplinary practices.”; and
  - (b) after subsection (3) there shall be inserted—
 

“(3A) Without prejudice to subsection (3), any rule made, whether before or after the coming into force of this subsection, by the Council under this section or section 35 which has the effect of prohibiting the formation of multi-disciplinary practices shall not have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved it.”.

### *Multi-national practices*

#### **32 Multi-national practices.**

Before section 61 of the 1980 Act there shall be inserted the following section—

##### **“60A Multi-national practices.**

- (1) Subject to the provisions of this section, solicitors and incorporated practices may enter into multi-national practices with registered foreign lawyers.

**Status:** Point in time view as at 01/04/1996. This version of this part contains provisions that are not valid for this point in time.

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- (2) The Council shall maintain a register of foreign lawyers, and may make rules with regard to registration; and, without prejudice to the generality of the foregoing, such rules may include provision as to—
  - (a) the manner in which applications for registration are to be made;
  - (b) the fees payable in respect of such applications;
  - (c) conditions which may be imposed in respect of registration; and
  - (d) the period for which any such registration is to run.
- (3) Section 34(2) and (3) apply to rules made under subsection (2) as they apply to rules made under that section.
- (4) Any foreign lawyer may apply to the Council to be registered as such for the purposes of this section and the Council shall, if they are satisfied that the legal profession of which the applicant is a member is so regulated as to make it appropriate for him to be allowed to enter into a multi-national practice with solicitors or incorporated practices, enter his name on the register.
- (5) Subject to subsection (6), the Secretary of State may by order made by statutory instrument provide that any enactment or instrument—
  - (a) passed or made before the commencement of this section;
  - (b) having effect in relation to solicitors; and
  - (c) specified in the order,
 shall have effect with respect to registered foreign lawyers as it has effect with respect to solicitors.
- (6) Before making any order under subsection (5), the Secretary of State shall consult the Council.
- (7) An order under subsection (5) may provide for an enactment or instrument to have effect with respect to registered foreign lawyers subject to such additions, omissions or other modifications as the Secretary of State specifies in the order.
- (8) No order shall be made under subsection (5) unless a draft of the order has been approved by both Houses of Parliament.”

#### Commencement Information

**I8** S. 32 partly in force; s. 32 not in force at Royal Assent see s. 75(2); s. 32 in force for certain purposes at 17.3.1993 by S.I. 1993/641, art. 3, Sch.

### *Complaints in relation to legal services*

#### **33 Complaints in relation to legal services.**

- (1) Where any person with an interest has made a complaint (a “conduct complaint”) to a professional organisation that a practitioner has—
  - (a) been guilty of professional misconduct; or
  - (b) provided inadequate professional services,
 the organisation shall investigate the matter, and shall thereafter make a written report to the complainer and the practitioner concerned of—

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- (i) the facts of the matter as found by the organisation; and
    - (ii) what action the organisation propose to take, or have taken, in the matter.
  - (2) The organisation shall ensure that the procedures adopted by them for the purpose of dealing with any conduct complaint are not such as to inhibit them from taking further action in the matter following consideration by them of such a report as is mentioned in subsection (4) below.
  - (3) The organisation shall comply with any request made to them by the Scottish legal services ombudsman under section 34 of this Act for information or, as the case may be, a report as soon as is reasonably practicable.
  - (4) On receipt of any report made to them by the ombudsman under section 34(4) of this Act in relation to a handling complaint the organisation shall—
    - (a) consider whether any further action requires to be taken in relation to the conduct complaint the treatment of which formed the subject-matter of the ombudsman’s investigation; and
    - (b) report the results of the consideration mentioned in paragraph (a) above to the person who made the handling complaint and the ombudsman; and, without prejudice to the foregoing, any such report shall include an account of what further action they have taken, or propose to take, in the matter.
  - (5) For the purposes of this section—
    - “professional organisation” means—
      - (a) the Faculty of Advocates;
      - (b) the Council of the Law Society of Scotland;
      - (c) the Scottish Conveyancing and Executry Services Board established under section 16 of this Act; and
      - (d) a body which has made a successful application under section 25 of this Act; and
    - “practitioner” means, in relation to—
      - (a) the Faculty of Advocates, an advocate;
      - (b) the Council, a solicitor;
      - (c) the Scottish Conveyancing and Executry Services Board, a practitioner within the meaning of section 23 of this Act; and
      - (d) a body which has made a successful application under section 25 of this Act, any person exercising—
        - (i) a right to conduct litigation; or
        - (ii) a right of audience;
- acquired by virtue of section 27 of this Act.

#### Commencement Information

**19** S. 33 wholly in force at 3.6.1991. see s. 75(2) and S.I. 1991/1252, art. 3, [Schedule 1](#)



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**Status:** Point in time view as at 01/04/1996. This version of this part contains provisions that are not valid for this point in time.

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### *Scottish legal services ombudsman*

#### **34 Scottish legal services ombudsman.**

- (1) The Secretary of State may, after consultation with the Lord President, and subject to subsection (9) below, appoint a person, to be known as the Scottish legal services ombudsman, to examine any written complaint (a “handling complaint”) made by or on behalf of a member of the public concerning the treatment by a professional organisation within the meaning of section 33 of this Act of a conduct complaint such as is mentioned in that section made by that member of the public or on his behalf.
- (2) The ombudsman shall make such investigation of any handling complaint as seems to him to be appropriate; and for that purpose he may request the organisation concerned to provide him with such information as he may reasonably require.
- (3) Where the organisation concerned have not completed an investigation under section 33(1) of this Act within such period as the Secretary of State may from time to time determine, the ombudsman may request a report from them on the progress of the investigation.
- (4) The ombudsman—
  - (a) may, at any stage in the investigation of a handling complaint, make an interim report in relation to that investigation; and
  - (b) shall, at the conclusion of such an investigation, report the result of that investigation,to the complainer and to the organisation concerned.
- (5) The ombudsman may—
  - (a) if so requested by any person appointed to carry out equivalent functions in relation to the provision of legal services in England and Wales, investigate a complaint against a professional body in England and Wales on that person’s behalf; and
  - (b) request any person appointed as mentioned in paragraph (a) above to investigate a complaint against an organisation in Scotland on his behalf.
- (6) The Secretary of State may by regulations extend the jurisdiction of the ombudsman by providing for this section to apply, with such modifications (if any) as he thinks fit, in relation to the investigation by the ombudsman of such categories of handling complaints as may be specified in the regulations with respect to the provision of executry services by persons other than executry practitioners within the meaning of section 23 of this Act.
- (7) Without prejudice to the generality of subsection (6) above, regulations under that subsection may make provision for the investigation of handling complaints with respect to particular persons or categories of person.
- (8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) The following shall not be eligible to be appointed as the ombudsman—
  - (a) advocates;
  - (b) solicitors;
  - (c) members and officers of the Scottish Conveyancing and Executry Services Board established by section 16 of this Act;

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- (d) subject to paragraph (e) below, executry practitioners within the meaning of section 23 of this Act;
- (e) where any such executry practitioner is a partnership or a body corporate, the partners or, as the case may be, the directors, secretary or other similar officers;
- (f) the directors, secretary or other similar officers of any recognised financial institution within the meaning of section 19(2) of this Act;
- (g) qualified conveyancers within the meaning of section 23 of this Act; or
- (h) any member or employee of a professional or other body any of whose members has acquired any right to conduct litigation or right of audience by virtue of section 27 of this Act.

(10) Schedule 3 to this Act shall have effect in relation to the ombudsman.

#### Commencement Information

**I10** S. 34 partly in force; s. 34 not in force at Royal Assent see 75(2); s. 34(1)(9)(a)-(c)(10) in force at 1.4.1991 by S.I. 1991/822, art. 3, **Sch.**; s. 34(2)-(8) in force at 3.6.1991 by S.I. 1991/1252, art. 3, **Sch.**; s. 34(9)(d)(e)(g) in force at 1.3.1997 by S.I. 1996/2894, art. 3, **Sch.** and S.I. 1996/2966, **art. 2**

VALID FROM 21/05/1997

#### **[<sup>F3</sup>34A Ombudsman's final report and recommendations.**

- (1) Where the Scottish legal services ombudsman has completed an investigation under this Act he shall make a written report of his conclusions and shall send a copy of the report to—
  - (a) the person who made the handling complaint;
  - (b) the professional organisation concerned; and
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (2) If the ombudsman decides to make a complaint about the practitioner concerned to the appropriate disciplinary body he may include in the report under this section a statement to that effect.
- (3) A report under this section may include one or more of the following recommendations—
  - (a) that the professional organisation concerned provide to the person making the handling complaint such information about the conduct complaint to which the handling complaint relates, and how it was dealt with, as the ombudsman considers appropriate;
  - (b) that the conduct complaint be investigated further by the professional organisation concerned;
  - (c) that the conduct complaint be reconsidered by the professional organisation concerned;
  - (d) that the professional organisation concerned consider exercising their powers in relation to the practitioner concerned;
  - (e) that the professional organisation concerned pay compensation of the stated amount to the person making the handling complaint for loss suffered by

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- him, or inconvenience or distress caused to him, as a result of the way in which the conduct complaint was handled by that organisation;
- (f) that the professional organisation to whom a recommendation under paragraph (e) above applies pay to the person making the handling complaint an amount specified by the ombudsman by way of reimbursement of the cost, or part of the cost, of making the handling complaint.
- (4) Where a report under this section includes any recommendation, the report shall state the ombudsman's reasons for making the recommendation.
- (5) For the purposes of the law of defamation the publication of any report of the ombudsman under this section and any publicity given under subsection (8) below shall be privileged unless the publication is proved to be made with malice.
- (6) It shall be the duty of any professional organisation to whom a report is sent by the ombudsman under this section to have regard to the conclusions and recommendations set out in the report so far as relating to that organisation.
- (7) Where a report sent to a professional organisation under this section includes a recommendation relating to them, the organisation shall, before the end of the period of three months beginning with the date on which the report was sent, notify the ombudsman, and the person who made the handling complaint, of—
- (a) the action which they have taken to comply with the recommendation or in consequence of further consideration of the matter by them; or
- (b) their decision not to comply wholly with a recommendation and any reason for that decision.
- (8) Where, at the end of the period of three months mentioned in subsection (7) above, a professional organisation have not wholly complied with a recommendation relating to them in a report under this section, the ombudsman may take such steps as he considers reasonable to publicise that fact; but shall in so publicising it state any reason given to the ombudsman by the organisation for their not having so complied (or a summary by the ombudsman of any such reason).
- (9) Any reasonable expenses incurred by the ombudsman under subsection (8) above may be recovered by him (as a civil debt) from the professional organisation concerned.
- (10) In this section—
- “the stated amount” means such amount as may be specified by the ombudsman, being an amount which does not exceed the prescribed amount; and
- “the prescribed amount” means £1000 or such greater amount as may from time to time be specified by order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

### Textual Amendments

**F3** S. 34A inserted (21.5.1997) by 1997 c. 35, ss. 2, 6, 11(2)

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VALID FROM 21/05/1997

**[<sup>F4</sup>34B Advisory functions of ombudsman.**

- (1) The Scottish legal services ombudsman may make recommendations to any professional organisation about their procedures for, and methods of, dealing with conduct complaints.
- (2) It shall be the duty of a professional organisation to whom a recommendation is made under this section—
  - (a) to consider the recommendation; and
  - (b) to notify the ombudsman of the results of that consideration and any action which they have taken, or propose to take, in consequence of the recommendation.]

**Textual Amendments**

**F4** S. 34B inserted (21.5.1997) by 1997 c. 35, ss. 3, 6, 11(2)

*Judicial appointments*

**35 Judicial appointments.**

- (1) Paragraphs 1 to 3 of Schedule 4 to this Act shall have effect in relation to the eligibility of sheriffs principal, sheriffs and solicitors to be appointed as judges of the Court of Session.
- (2) Paragraph 4 of the said Schedule shall have effect in relation to the appointment of—
  - (a) members of the Inner House of the Court of Session; and
  - (b) a Lord Ordinary of that Court to be the Lord Ordinary in exchequer causes.
- (3) Notwithstanding any provision in any enactment, if it appears expedient to the Secretary of State he may, in accordance with the provisions of paragraphs 5 to 11 of the said Schedule, and after consulting the Lord President, appoint persons to act as temporary judges of the Court of Session.

<sup>F5</sup>(4) .....

**Textual Amendments**

**F5** S. 35(4) repealed (5.1.1994) by 1993 c. 45, s. 2(2)(3), Sch.2.

**Commencement Information**

**I11** S. 35 wholly in force at 1.4.1991. See s. 75(2) and S.I. 1991/822, art. 3, Schedule.

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### *Solicitors' and counsel's fees*

#### **36 Solicitors' and counsel's fees.**

- (1) An advocate and the person instructing him may agree, in relation to a litigation undertaken on a speculative basis, that, in the event of the litigation being successful, the advocate's fee shall be increased by such percentage as may, subject to subsection (2) below, be agreed.
- (2) The percentage increase which may be agreed under subsection (1) above shall not exceed such limit as the court may, after consultation with the Dean of the Faculty of Advocates, prescribe by act of sederunt.
- (3) After section 61 of the 1980 Act there shall be inserted the following section—

#### **“61A Solicitors' fees.**

- (1) Subject to the provisions of this section, and without prejudice to—
    - (a) section 32(1)(i) of the Sheriff Courts (Scotland) Act 1971; or
    - (b) section 5(h) of the Court of Session Act 1988,
 where a solicitor and his client have reached an agreement in writing as to the solicitor's fees in respect of any work done or to be done by him for his client it shall not be competent, in any litigation arising out of any dispute as to the amount due to be paid under any such agreement, for the court to remit the solicitor's account for taxation.
  - (2) Subsection (1) is without prejudice to the court's power to remit a solicitor's account for taxation in a case where there has been no written agreement as to the fees to be charged.
  - (3) A solicitor and his client may agree, in relation to a litigation undertaken on a speculative basis, that, in the event of the litigation being successful, the solicitor's fee shall be increased by such a percentage as may, subject to subsection (4), be agreed.
  - (4) The percentage increase which may be agreed under subsection (3) shall not exceed such limit as the court may, after consultation with the Council, prescribe by act of sederunt.”.
- (4) In section 33 of the <sup>M3</sup>Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel who have provided services under that Act) there shall be added at the end the following subsection—
- “(6) It shall not be competent, in any litigation arising out of any dispute as to the amount of—
- (a) any fees or outlays to be paid to a solicitor; or
  - (b) any fees to be paid to an advocate,
- under or by virtue of this Act, for the court to remit the account concerned for taxation.”.

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#### Commencement Information

**I12** S. 36 partly in force; s. 36(2)(3) in force for certain purposes at 4.7.1992 and s. 36(1)-(3) wholly in force at 20.4.1992 see s. 75(2) and S.I. 1992/1599, arts.3,4, Schs. 1, 2.

#### Marginal Citations

**M3** 1986 c. 47.

### Miscellaneous and supplementary

#### 37 Admission of solicitors and notaries public.

(1) For subsection (2) of section 6 of the 1980 Act (admission of persons as solicitors) there shall be substituted the following subsection—

“(2) Where—

- (a) a person has complied with the requirements of subsection (1); but
- (b) the Council have not lodged a petition for his admission as a solicitor within one month of his having so complied,

he may apply by petition to the court for admission as a solicitor; and if he produces the certificate mentioned in paragraph (b) of subsection (1) the court shall make an order admitting him as a solicitor.”

(2) Section 57 of that Act (admission of notaries public) shall be amended as follows—

(a) for subsection (1) there shall be substituted—

“(1) The offices and functions of—

- (a) the clerk to the admission of notaries public; and
- (b) the keeper of the register of notaries public,

are hereby transferred to the Council.”;

(b) in subsection (2), for the words from “grant” to the end there shall be substituted “ direct the Council to register him in the register of notaries public.” ”;

(c) after subsection (2) there shall be inserted the following subsections—

“(2A) A petition by the Council under section 6(3A) for the admission of a person as a solicitor may, if the person so requests, include an application for the person’s admission as a notary public; and an order on any such petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register him in the register of notaries public.

(2B) A petition by a person under section 6(2) for his admission as a solicitor may include an application for his admission as a notary public; and an order on any such petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register him in the register of notaries public.”;

(d) in subsection (4) for the word “solicitor” there shall be substituted “ person” ”; and

(e) for subsection (5) there shall be substituted—

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“(5) The Council may charge such reasonable fees as they consider appropriate in respect of the admission of any person as a notary public.”.

(3) In section 58 of that Act (removal from and restoration to the register of names of notaries public)—

- (a) in subsection (1), for the words from “give” to the end there shall be substituted “ strike off or, as the case may be, remove his name from the register of notaries public” ”;
- (b) in subsection (2), for the words from “it” to “thereupon” there shall be substituted “ the Council shall forthwith” ”;
- (c) at the end of that section there shall be added the following subsections—

“(3) Where a person who is both a solicitor and a notary public is suspended from practising as a solicitor under this Act the Council shall forthwith remove the person’s name from the register of notaries public.

(4) If the suspension of such a person as is mentioned in subsection (3) is terminated or otherwise comes to an end the Council shall restore the person’s name to the register.”.

#### Commencement Information

**I13** S. 37 wholly in force at 20.7.1992 see s. 75(2) and S.I. 1992/1599, art.4, Sch. 2.

### 38 Availability of legal aid in relation to services provided under this Act.

After section 43 of the <sup>M4</sup>Legal Aid (Scotland) Act 1986 there shall be inserted the following section—

#### “43A Application of Act to services provided under Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

- (1) Advice and assistance shall be available, in accordance with the provisions of this Act, in relation to the provision of executry services by executry practitioners and recognised financial institutions and conveyancing services by independent qualified conveyancers, all within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 as they are so available in relation to the provision of the like services by solicitors.
- (2) Subject to any act of sederunt or act of adjournal made under subsection (7) of section 26 of that Act (consideration of applications made under section 25) advice and assistance, civil legal aid and criminal legal aid shall be available, in accordance with the provisions of this Act, in relation to the provision of services by persons who have acquired rights to conduct litigation or, as the case may be, rights of audience by virtue of that section as they are so available in relation to the provision of the like services by solicitors and, where appropriate, by advocates.

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- (3) Where advice and assistance, civil legal aid or criminal legal aid has been made available by virtue of this section, the provisions of this Act shall apply in relation to the person providing those services as they apply in relation to a solicitor or advocate providing like services.”.

#### Commencement Information

**I14** S. 38 wholly in force on 30.09.1991 see s. 75(2) and s.I. 1991/2151, art. 3, Sch.

#### Marginal Citations

**M4** 1986 c. 47.

### 39 Removal of certain restrictions on the borrowing of the court process.

Section 29 of the 1980 Act (which restricts the borrowing of the process relating to any court proceedings to solicitors having a place of business, in relation to the Court of Session, in Edinburgh, and, in relation to the inferior courts, within the jurisdiction of the court concerned) shall cease to have effect.

#### Commencement Information

**I15** S. 39 wholly in force at 30.9.1991 see s. 75(2) and S.I. 1991/2151, art. 3, Sch.

### 40 Advisory and supervisory functions of the Director.

- (1) Before—
- (a) making any regulations under section 17(11) or 18(10) of this Act; or
  - (b) approving any rules—
    - (i) made under section 17(3); or
    - (ii) such as are mentioned in section 31(1) or (2), of this Act; or
  - (c) considering any provisions of a draft scheme under section 26(1) or (3) of this Act,
- the Secretary of State shall first send a copy of the proposed regulations, rules or provisions to the Director.
- (2) The Director shall consider whether any such regulations, rules or provisions as are mentioned in subsection (1) above would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Secretary of State as he thinks fit.
- (4) The Director may publish any advice given by him under subsection (3) above.
- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) above any matter—
- (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the Director’s opinion, seriously and prejudicially affect the interests of that person.



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- (6) For the purposes of the law of defamation, the publication of any advice by the Director under this section shall be absolutely privileged.

#### Commencement Information

**I16** S. 40 wholly in force at 30.9.1991 see s. 75(2) and [S.I. 1991/2151](#), art. 3, Sch.

## 41 Investigatory powers of the Director.

- (1) For the purpose of investigating any matter under section 40 of this Act, the Director may by notice in writing—
- (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person’s custody or under that person’s control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to him (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on the grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.
- (3) Subsections (5) to (8) of section 85 of the <sup>M5</sup>Fair Trading Act 1973 shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

#### Commencement Information

**I17** S. 41 wholly in force at 30.9.1991 see [s. 75\(2\)](#) and [s.I. 1991/2151](#), art. 3, Sch.

#### Marginal Citations

**M5** 1973 c. 41.

## 42 Review of rules approved by the Secretary of State.

- (1) Where the Secretary of State has approved—
- (a) a rule under section 17(15) or 31(2) of this Act; or
  - (b) a draft scheme under section 26(6) of this Act,
- he may and, where the Lord President, in the case of a draft scheme such as is mentioned in paragraph (b), so requests shall, require the body which made the rule or, as the case may be, the scheme to review its terms.
- (2) When they have reviewed a rule or, as the case may be, a scheme, following a requirement made under subsection (1) above, the body concerned may revise the rule or scheme in the light of that review, and shall then submit the rule or scheme as revised or, if they have not revised it, as previously approved—

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- (a) in the case of a rule such as is mentioned in subsection (1)(a) above, to the Secretary of State; or
  - (b) in the case of a draft scheme such as is mentioned in subsection (1)(b) above, to the Secretary of State and the Lord President.
- (3) Where a rule, whether revised or as previously approved, is submitted to the Secretary of State under subsection (2)(a) above, he may—
- (a) approve the rule as submitted to him; or
  - (b) amend the rule in such manner as he considers appropriate,
- and (except where the rule remains in the form previously approved) he may direct the body concerned to bring it into operation as soon as is practicable.
- (4) Where the Lord President and the Secretary of State are agreed that the terms of a draft scheme submitted to them under subsection (2)(b) above are satisfactory, the Secretary of State may—
- (a) approve the scheme; and
  - (b) (except where the scheme remains in the form previously approved) direct the body concerned to bring the scheme, as so amended, into force as soon as is practicable.
- (5) Where either the Secretary of State or the Lord President is of the view that the terms of any such scheme so submitted to them are not satisfactory, but they do not agree as to what the terms of the scheme should be, the scheme shall continue to have effect as previously approved.
- (6) Where the Secretary of State and the Lord President agree both that the terms of a scheme so submitted to them are not satisfactory, and as to what the terms of the scheme should be, the Secretary of State may amend the scheme in such manner as he and the Lord President consider appropriate; and may direct the body concerned to bring the scheme, as so amended, into force as soon as is practicable.
- (7) The provisions of section 40(1)(b) and (c) of this Act shall apply to rules and schemes submitted under subsection (2) of this section as they apply to rules submitted under sections 17(15) and 31(2) and schemes submitted under section 25(1) of this Act.

#### Commencement Information

**I18** S. 42 wholly in force at 30.9.1991 see s. 75(2) and S.I. 1991/2151, art. 3, Sch.

### 43 Functions of Director in relation to certain rules made under the 1980 Act.

After section 64 of the 1980 Act there shall be inserted the following sections—

#### “64A Advisory and supervisory functions of the Director General of Fair Trading.

- (1) Before considering any rule—
  - (a) made under section 25A(4)
  - or (5); or
  - (b) such as is mentioned in section 34(3A),

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the Secretary of State shall send a copy of the proposed rule in question to the Director.

- (2) The Director shall consider whether the rule in question would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Secretary of State as he thinks fit.
- (4) The Director may publish any advice given by him under subsection (3).
- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) any matter—
  - (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.
- (6) For the purposes of the law of defamation, the publication of any advice or report by the Director under this section shall be absolutely privileged.

#### **64B Duty of Secretary of State.**

When he has received advice under section 64A(3) in relation to a rule made under section 25A(4) or (5) or such as is mentioned in section 34(3A), the Secretary of State may, having considered—

- (a) that advice;
  - (b) whether the interests of justice require that there should be such a rule; and
  - (c) in relation to a rule made under section 25A(5), any relevant practice obtaining in the sheriff court,
- approve or refuse to approve the rule.

#### **64C Investigatory powers of the Director.**

- (1) For the purpose of investigating any matter under section 64A, the Director may by notice in writing—
  - (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person's custody or under that person's control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to him (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on the grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.

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- (3) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

#### **64D Review of rules approved by the Secretary of State.**

- (1) Without prejudice to the power of the Council to review any rule made by them, where the Secretary of State has approved a rule under section 64B he may, and if so requested by the Lord President shall, require the Council to review its terms.
- (2) When they have reviewed a rule following a requirement made under subsection (1), the Council may revise the rule in the light of that review, and shall then submit the rule as revised or, if they have not revised it, as previously approved to the Lord President and the Secretary of State.
- (3) Where the Lord President and the Secretary of State are agreed that the terms of the rule as submitted to them are satisfactory, the Secretary of State shall approve the rule, and may direct the Council to bring it into force as soon as is practicable.
- (4) Where either the Secretary of State or the Lord President is of the view that any rule, as submitted to them, is not satisfactory, but they do not agree as to what the terms of the rule should be, the rule shall continue to have effect as previously approved.
- (5) Where the Secretary of State and the Lord President agree both that any rule submitted to them under subsection (2) is not satisfactory, and as to what the terms of the rule should be, the Secretary of State may direct the Council—
- (a) to amend the rule in such manner as he and the Lord President consider appropriate; and
  - (b) to bring the rule, as so amended, into force as soon as is practicable.
- (6) The provisions of sections 64A and 64B apply to rules submitted to the Secretary of State under this section as they apply to rules submitted to him under sections 25A(9) or (10) and 34(3A).”

#### **Commencement Information**

**I19** S. 43 wholly in force at 3.6.1991 see s. 75(2) and S.I. 1991/1252, art. 3, Sch. 1

## **44 Interpretation of Part II.**

In this Part of this Act, unless the context otherwise requires—

“advocate” means a member of the Faculty of Advocates practising as such;

“the Director” means the Director General of Fair Trading;

“Lord President” means the Lord President of the Court of Session;

“solicitor” has the same meaning as in section 65(1) of the 1980 Act; and

“the 1980 Act” means the <sup>M6</sup>Solicitors (Scotland) Act 1980.

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**Commencement Information**

**I20** S. 44 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Sch.

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**Marginal Citations**

**M6** 1980 c. 46.

**Status:**

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**Changes to legislation:**

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