

Status: Point in time view as at 02/07/2012.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Cross Heading: The Solicitors (Scotland) Act 1980 (c. 46) is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 8

AMENDMENT OF ENACTMENTS

PART II

MISCELLANEOUS

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

- 29 (1) The Solicitors (Scotland) Act 1980 shall be amended as follows.
- (2) In section 9 (removal of name from roll on request)—
- (a) after the words “his name” there shall be inserted the words “, or any annotation made against his name under section 25A(3), ”; and
 - (b) after the words “that solicitor” there shall be inserted the words “ or, as the case may be, the annotation against his name, ”.
- (3) In section 10 (restoration of name to roll on request), in subsection (1A)—
- (a) after the words “whose name” there shall be inserted the words “, or any annotation against whose name, ”; and
 - (b) after the words “that solicitor” there shall be inserted the words “ or, as the case may be, the annotation, ”.
- (4) In section 20 (duty of Council to supply lists)—
- (a) in subsection (1), after paragraph (a) there shall be inserted the following paragraph—
 - “(ab) to the Principal Clerk of Session;”;
 - (b) for subsection (2) there shall be substituted the following subsection—
 - “(2) The Council shall send a list of all solicitors who have rights of audience in—
 - (a) the Court of Session, to—
 - (i) the Principal Clerk of Session;
 - (ii) the Principal Clerk of the Judicial Office of the House of Lords; and
 - (iii) the Registrar to the Judicial Committee of the Privy Council;
 - and
 - (b) the High Court of Justiciary, to the Principal Clerk of Justiciary,
- as soon as practicable after 1st December in each year; and where, by virtue of an order under section 53(2)(ba), 53A(2)(ba) or 55(1)(ba), a solicitor’s right of audience in any of those courts is suspended or

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revoked, the Council shall forthwith inform the persons mentioned in this subsection of that fact.”.

(5) In section 26 of the 1980 Act (offence for solicitors to act as agents for unqualified persons)—

- (a) in subsection (1)(c), at the beginning there shall be inserted “ subject to subsection (4), ”;
- (b) in subsection (1)(d), at the beginning there shall be inserted “ subject to subsection (4), ”;
- (c) in subsection (2), at the end there shall be inserted “ or employed by a law centre. ”; and
- (d) after subsection (3) there shall be inserted—

“(4) Subsection (1)(c) and (d) shall not apply in relation to—

- (a) writs relating to heritable or moveable property drawn or prepared upon the account of or for the profit of independent qualified conveyancers providing conveyancing services within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; or
- (b) papers to found or oppose an application for a grant of confirmation in favour of executors drawn or prepared upon the account of or for the profit of an executry practitioner or recognised financial institution providing executry services within the meaning of the said section 23.”

(6) In section 32 (which makes it an offence for unqualified persons to prepare writs and papers relating to certain matters)—

- (a) in subsection (2)(a), after the words “fee, gain or reward” there shall be inserted the words “ (other than by way of remuneration paid under a contract of employment) ”; and
- (b) after subsection (2) there shall be inserted the following subsections—

“(2A) Subsection (1)(a)

shall not apply to a qualified conveyancer providing conveyancing services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(2B) Subsection (1)(b)

shall not apply to a person who is, by virtue of an act of sederunt made under section 32 (power of Court of Session to regulate procedure) of the Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.

(2C) Subsection (1)(c)

shall not apply to an executry practitioner or a recognised financial institution providing executry services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”.

(7) At the end of section 33 (unqualified person not entitled to fees etc.) there shall be inserted the words “ or in relation to writs framed or drawn by a person who is, by

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virtue of an act of sederunt made under section 32 of the ^{M1}Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.”

(8) In section 42A (powers of Council where inadequate professional services alleged), at the end of subsection (2) there shall be inserted the following paragraph—

“(d) to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Council may specify.”

(9) In section 51(3) (complaints to Scottish Solicitors Discipline Tribunal)—

(a) after paragraph (b) there shall be inserted—

“(ba) the Dean of the Faculty of Advocates;”;

(b) for paragraph (f) there shall be substituted—

“(f) the Scottish legal services ombudsman.”

(10) In section 53 (powers of Tribunal)—

(a) after subsection (2)(b) there shall be inserted the following paragraph—

“(ba) order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;”;

(b) in subsection (2)(c), for the words “£4,000” there shall be substituted the words “£10,000”;

(c) after subsection (3A) there shall be inserted the following subsection—

“(3B) The power conferred by subsection (2)(ba)

may be exercised by the Tribunal either independently of, or in conjunction with, any other power conferred by that subsection.”;

and

(d) in subsection (6), after the words “as a solicitor” there shall be inserted the words “ or that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked ”.

(11) In section 53A (inadequate professional services: powers of Tribunal),

(a) after subsection (2)(b) there shall be inserted the following paragraph—

“(ba) to order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;”;

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

“(d) to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Tribunal may specify.”

(12) In section 55 (powers of court)—

(a) after subsection (1)(b) there shall be inserted the following paragraphs—

“(ba) suspend the solicitor from exercising any right of audience held by him by virtue of section 25A for such period as the court may determine; or

(bb) revoke any right of audience so acquired by him; or”;

(b) after subsection (3) there shall be inserted the following subsection—

“(3A) A solicitor whose rights of audience under section 25A have been revoked in pursuance of an order made by the court under subsection (1) may apply to the court for an order restoring those rights, and the court may make such order.”

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(13) After section 56 there shall be inserted the following section—

“56A Further provision as to compensation awards.

- (1) The taking of any steps under section 42A(2) or 53A(2) shall not be founded upon in any proceedings for the purpose of showing that the solicitor in respect of whom the steps were taken was negligent.
- (2) A direction under section 42A(2)(d) or 53A(2)(d) to a solicitor to pay compensation to a client shall not prejudice any right of that client to take proceedings against that solicitor for damages in respect of any loss which he alleges he has suffered as a result of that solicitor’s negligence, and any sum directed to be paid to that client under either of those provisions may be taken into account in the computation of any award of damages made to him in any such proceedings.
- (3) The Secretary of State may by order made by statutory instrument amend subsection (2)(d) of sections 42A and 53A by substituting for the sum for the time being specified in those provisions such other sum as he considers appropriate.
- (4) Before making any such order the Secretary of State shall consult the Council.
- (5) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(14) In section 63 (penalties and time limit for prosecution of offences)—

- (a) in subsection (1)—
 - (i) for the words “level 3” there shall be substituted the words “ level 4 ”; and
 - (ii) the words from “and to imprisonment” to the end shall cease to have effect; and
- (b) after subsection (2) there shall be inserted the following subsections—

“(3) Where an offence under this Act 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.

- (4) Where an offence under this Act 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.”.

(15) In subsection (1) of section 65 (interpretation)—

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- (a) after the definition of “the court” there shall be inserted—
 - ““the Director” means the Director General of Fair Trading;
 - “foreign lawyer” means a person who is not a solicitor or an advocate but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outwith Scotland;”;

- (b) after the definition of “judge” there shall be inserted—
 - ““law centre” means a body—
 - (a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and
 - (b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;”;

- (c) after the definition of “Lord President” there shall be inserted—
 - F1<

- “multi-national practice” means—
 - (a) a partnership whose members are solicitors or incorporated practices and registered foreign lawyers; or
 - (b) a body corporate whose members include registered foreign lawyers, and membership of which is restricted to solicitors, incorporated practices, registered foreign lawyers and other multi-national practices;”

- (d) after the definition of “property” there shall be inserted—
 - ““registered foreign lawyer” means a foreign lawyer who is registered under section 60A;”

- (e) after the definition of “the Society” there shall be inserted—
 - ““Scottish legal services ombudsman” means the ombudsman appointed under section 34 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;”

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...
F2(f)

- (16) In Schedule 1 (The Law Society of Scotland), after paragraph 11 there shall be inserted—

“ Exemption from liability for damages

11A Neither the Society nor any of its officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of its functions unless the act or omission is shown to have been in bad faith.”

- (17) In Schedule 4 (constitution, procedure and powers of Tribunal)—
 - (a) in paragraph 1—

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- (i) in sub-paragraph (a), at the end there shall be inserted the words “appointed by the Lord President;”
- (ii) in sub-paragraph (b), for the word “4” there shall be substituted the word “8”;
- (iii) at the end of sub-paragraph (b) there shall be inserted the words “appointed by the Lord President after consultation with the Secretary of State.”; and
- (iv) the words “appointed by the Lord President”, where they appear at the end of that paragraph, shall cease to have effect;
- (b) in paragraph 2—
 - (i) after the words “Lord President” there shall be inserted the words “after consultation with the Secretary of State”; and
 - (ii) for the words “so re-appointed” there shall be substituted the words “re-appointed by the Lord President”;
- (c) in paragraph 3, after the words “as the case may be,” there shall be inserted the words “after consultation with the Secretary of State,”;
- (d) in paragraph 14, for the words from “may be published” to the end there shall be substituted the words “shall, subject to paragraph 14A, be published in full”;
- (e) after paragraph 14 there shall be inserted the following paragraph—

“14A In carrying out their duty under paragraph 14, the Tribunal may refrain from publishing any names, places or other facts the publication of which would, in their opinion, damage, or be likely to damage, the interests of persons other than—

 - (a) the solicitor against whom the complaint was made; or
 - (b) his partners; or
 - (c) his or their families,

but where they so refrain they shall publish their reasons for so doing.”;
- (f) in paragraph 17—
 - (i) the words from “also” to “before the order” shall cease to have effect;
 - (ii) after the words “and shall” there shall be inserted the words “, without prejudice to paragraph 14,”; and
 - (iii) the words from “and in such other manner” to the end shall cease to have effect; and
- (g) after paragraph 18 there shall be inserted the following paragraph—

“18A Without prejudice to paragraph 18, the Council shall ensure that a copy of every decision published under paragraph 14 is open for inspection at the office of the Society during office hours by any person without payment of any fee.”.

Textual Amendments

- F1** Words in Sch. 8 para. 29(15)(c) repealed (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 124(2)(g)(i)**, 150(2); [S.S.I. 2012/152](#), [art. 2](#), [sch.](#)
- F2** Sch. 8 para. 29(15)(f) repealed (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 124(2)(g)(ii)**, 150(2); [S.S.I. 2012/152](#), [art. 2](#), [sch.](#)

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Commencement Information

- II** Sch. 8 para. 29 partly in force; para. 29 not in force at Royal Assent see s. 75(2); para. 29(6)(b) in force for certain purposes and para. 29(6)(a)(7) wholly in force at 1.1.1991 by 1990/2624; para. 29(1)-(4)(8)-(14)(15)(a)(e)(16)(17) in force at 3.6.1991 by 1991/1252, art. 3, Sch. 1; para. 29(5)(c)(15)(b)-(d)(f) in force at 17.3.1993 by S.I. 1993/641, art. 3, Sch.; para. 29(5)(6)(b) in force for certain purposes at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

Marginal Citations

- M1** 1971 c. 58.

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