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STATUTORY INSTRUMENTS

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**1992 No. 1422 (S.138)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.4) (Solicitors, Notaries Public, Qualified  
Conveyancers and Executry Practitioners) 1992**

*Made* - - - - *16th June 1992*  
*Coming into force* - - *20th July 1992*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1), and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No.4) (Solicitors, Notaries Public, Qualified Conveyancers and Executry Practitioners) 1992 and shall come into force on 20th July 1992.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

**Amendment of the Rules of the Court of Session**

2.—(1) The Rules of the Court of Session(2) shall be amended in accordance with the following sub-paragraphs.

(2) For rules 2 to 11, substitute the following rules:—

**“2 Applications and appeals under Solicitors (Scotland) Act 1980**

(1) An application or appeal under the Solicitors (Scotland) Act 1980(3) (“the Act of 1980”) shall be by petition to the Inner House.

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(1) 1988 c. 36.

(2) S.I. 1965/321; relevant amending instruments are S.I. 1968/1971, 1970/134, 1971/1714, 1974/945, 1976/283, 867, 1977/1621, 1978/155, 1979/1410, 1980/1144, 1982/1387, 1986/514, 1941, 1955, 1987/1206, 2160 and 1990/705. Rule 4 was amended by section 10(1) of the Decimal Currency Act 1969 (c. 19).

(3) 1980 c. 46

(2) An appeal under section 16(2), 39A(8), 40(3) or 54(1) of, or paragraph 3 of Schedule 2 to, the Act of 1980(4) shall state the date on which the decision appealed against was intimated to the petitioner.

(3) An application under paragraph 5(4) of Schedule 3 to the Act of 1980(5) in respect of a notice under paragraph 5(2) of that Schedule shall state the date on which the notice was served on the petitioner.

(4) An application under section 54(2) of the Act of 1980 in respect of a direction or order shall state the date on which the decision containing the direction or order was intimated to the petitioner.

### **3 Applications for admission as notary public**

(1) An application under section 57(2)(6) of the Act of 1980 (application for admission as notary public) shall be framed either by the Council of the Law Society of Scotland or by the applicant.

(2) The Council shall—

- (a) nominate authorised representatives to administer the oath of the office of notary public;
- (b) issue all commissions as notary public;
- (c) keep the register of notaries public; and
- (d) upon request by a notary public, and upon payment of such reasonable fee as the Council may impose, supply him with a duly certified and docquetted protocol book of ninety one folios.

### **4 Intimation and service**

(1) A petition lodged under rule 2 shall be brought before a Division in chambers, and the Division may without hearing parties and subject to the following paragraphs make such order for intimation and service as it considers appropriate.

(2) In an appeal under section 16(1)(7), 16(2), 19(8), 39A(8), or 40(3) of, or under paragraph 3 of Schedule 2 to, the Act of 1980, and in an application under paragraph 5(4) of Schedule 3 to the Act of 1980, the court shall order service of the petition on the Council and intimation in the Minute Book and shall allow the Council to lodge Answers to the petition within twenty one days after service.

(3) In an appeal under section 54(1), or in an application under section 54(2) of the Act of 1980, the court shall order intimation to the Discipline Tribunal and the Law Society of Scotland (which shall, however, not be regarded as a party to the cause) and shall ordain the Tribunal to lodge in process within the period of the *induciae* the decision of the Tribunal in respect of which the appeal or application is made together with the documents lodged by

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(4) Section 39A of the Solicitors (Scotland) Act 1980 (c. 46) was inserted by section 4 of the Solicitors (Scotland) Act 1988 (c. 42); section 40 of the Act of 1980 was amended by paragraph 18 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) and by paragraph 12 of Schedule 1 to the Solicitors (Scotland) Act 1988; section 54 of the Act of 1980 was amended by paragraph 29 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985; schedule 2 of the Act of 1980 was amended by paragraph 22 of Schedule 1 to and by Schedule 2 to the Solicitors (Scotland) Act 1988.

(5) Paragraph 5 of Schedule 3 of the Solicitors (Scotland) Act 1980 was amended by Part I paragraph 34 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.

(6) Section 57(2) of the Solicitors (Scotland) Act 1980 was amended by section 37 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

(7) Section 16(1) of the Solicitors (Scotland) Act 1980 was amended by paragraph 1 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.

either party and (if available) the notes of evidence adduced before and heard by the Discipline Tribunal.

(4) In an application under section 41(8) of, or paragraph 5(1) of Schedule 3 to or paragraph 12 of Schedule 4 to, the Act of 1980, the court shall order service of the petition on the respondent and intimation in the Minute Book and shall allow the respondent to lodge Answers to the petition within twenty one days after service.

(5) In an application under section 55(3) of the Act of 1980, the court shall order service on the Discipline Tribunal and the Council of the Law Society of Scotland.

## **5 Procedure after order for intimation and service**

The court shall, after an order for intimation and service under rule 4, proceed in the petition summarily in such manner as shall be necessary and proper.

## **6 Appeals under section 54(1) of the Act of 1980**

In an appeal under section 54(1) of the Act of 1980—

- (a) the court may substitute any other punishment for that imposed by the decision appealed against, or make any order in relation to it which it may think fit;
- (b) where the petitioner is a person or one of the persons who complained of the solicitor's alleged professional misconduct, the court may order him to give security for expenses (including the cost of extending the notes of evidence adduced before and heard by the Discipline Tribunal) as a condition of proceeding with the petition.

## **7 Abandonment**

Any petitioner may, at any time after presenting a petition under rule 2, abandon the petition by giving notice of abandonment to all persons upon whom the petition has been served, and on such conditions as to expenses as the court may impose.

## **8 Remit for further inquiry**

In an application or appeal under the Act of 1980, the court may, if it thinks it necessary or expedient in the interests of justice, remit to any person to make further enquiry into the facts, or to take further evidence and to report to the court.

## *SECTION 2A*

### *QUALIFIED CONVEYANCERS AND EXECUTRY PRACTITIONERS*

## **9 Applications and appeals in respect of qualified conveyancers and executry practitioners**

(1) Subject to paragraph (4), an application under section 17(6), 18(7), 20(7), 20(11) (b), 21(5), 21(7) or 21(10) of, or under paragraph 20 of Schedule 1 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(9) (“the Act of 1990”) shall be by petition to the Inner House.

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(8) Section 41 of the Solicitors (Scotland) Act 1980 was amended by paragraph 19 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and by paragraph 13 of Schedule 1, and by Schedule 2, to the Solicitors (Scotland) Act 1988.

(9) 1990 c. 40.

(2) An application under section 17(6), 18(7) or 20(11)(b) of the Act of 1990 shall state the date on which the outcome of the review was intimated to the petitioner.

(3) An application under section 21(5) of the Act of 1990 in respect of a direction shall state the date on which the direction was received by the petitioner.

(4) An application for leave under section 21(10) of the Act of 1990 shall be made by motion in the process of the petition under that section to which it relates.

## **10 Intimation and service**

(1) A petition lodged under rule 9 shall be brought before a Division in chambers, and the Division may without hearing parties and subject to the following paragraphs make such order for intimation and service as it considers appropriate.

(2) In an application under section 17(6), 18(7), 20(11)(b) or 21(5) of the Act of 1990, the court shall order service of the petition on the Board established under section 16 of the Act of 1990 and intimation in the Minute Book.

(3) In an application under section 20(7) or 21(7) of, or paragraph 20 of Schedule 1 to, the Act of 1990, the court shall order service of the petition on the practitioner and intimation in the Minute Book.

(4) In an application under section 21(10) of the Act of 1990 the court shall order service of the petition on the practitioner and on the bank, building society or other deposit holder and intimation in the Minute Book.

## **11 Procedure after order for intimation and service**

The court shall, after an order for intimation and service under rule 10, proceed in the petition summarily in such manner as shall be necessary and proper.

### **11A Abandonment**

A petitioner may, at any time after presenting a petition under rule 9, abandon the petition by giving notice of abandonment to all persons upon whom the petition has been served, and on such conditions as to expenses as the court may impose.

### **11B Remit for further inquiry**

In any application under the Act of 1990, the court may, if it thinks it necessary or expedient in the interests of justice, remit to any person to make further enquiry into the facts, or to take further evidence and to report to the court.”.

(3) In Rule 190 (Inner House Petitions)(10)—

(a) in class (iv) omit the words, “(other than petitions for the admission of a solicitor)”;

(b) after class (x) insert the following class:—

“(xi) Petitions under sections 17, 18, 20, or 21 of, or paragraph 20 of schedule 1 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;”.

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(10) Rule 190; relevant amending instruments are [S.I. 1970/134](#); [1976/283](#); [1977/1621](#); [1980/1144](#) and [1987/1206](#).

Edinburgh,  
16th June 1992

*J.A.D. Hope*  
Lord President, IPD

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt)

This Act of Sederunt amends the Rules of the Court of Session by—

- (a) consolidating the provisions in rules 2 to 11 relating to solicitors and providing for admission as a solicitor to be made by petition presented to the Inner House, (paragraph 2(2));
- (b) providing a new procedure for admission as a notary public following section 37 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, (paragraph 2(2) and (3)); and
- (c) providing procedures for applications and appeals in respect of qualified conveyancers and executry practitioners under sections 17, 18, 20 and 21 of, and paragraph 20 of schedule 1 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, (paragraph 2(2) and (3)).