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STATUTORY INSTRUMENTS

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**1997 No. 317**

**The Executory Practitioners (Scotland) Regulations 1997**

**PART V**

**ACCOUNTS AND RECORDS**

**Client accounts**

**22.**—(1) An executory practitioner shall at all times keep clients' money separate from other money and ensure that clients' money is available for payment to clients on demand or upon such conditions as the client may authorise.

(2) An executory practitioner shall pay clients' money promptly upon receipt into a client account for the particular client concerned.

(3) A client account is an interest earning account with a bank or a building society.

(4) A client account shall include in its title the word “client” and the name of the particular client concerned, except that, where the clients' money belongs to an executory or a trust, of which the client or the executory practitioner is an executor or trustee, the client account shall include in its title the names of the executors or trustees and the word “executory” or “trust”, as the case may be.

(5) When opening a client account, an executory practitioner shall give written notice to the bank or building society concerned that the account is a client account and that therefore all money from time to time standing to the credit of that account belongs to the client and not to the executory practitioner.

(6) An executory practitioner shall account to the client for all interest earned on the client account for that client.

(7) An executory practitioner shall ensure that the rate of interest earned on clients' money in a client account is the best rate of interest reasonably obtained at the bank or building society holding the client account having regard to the amount of money involved and upon the basis that the money is withdrawable upon demand and without loss of interest.

(8) No charge shall be made by an executory practitioner for opening or maintaining a client account.

(9) An executory practitioner who fails to comply with any of the duties in this regulation or in regulation 23 shall be liable to compensate any client for any loss of clients' money or of interest resulting from that failure.

**Operating client accounts**

**23.**—(1) Subject to paragraph (2) an executory practitioner shall credit a client account only with clients' money and shall, promptly upon discovery, withdraw from it any other money.

(2) Where an executory practitioner receives a cheque or a banker's draft that includes clients' money as well as other money, the executory practitioner shall—

(a) credit the appropriate client account with the full amount of the cheque or draft; and

- (b) as soon as reasonably practicable thereafter, withdraw from that account a sum equal to the amount of the cheque or draft that did not represent clients' money.
- (3) Subject to paragraph (2), an executry practitioner may withdraw by cheque or transfer clients' money from a client account only—
  - (a) with the written consent of that client; or
  - (b) in payment of that executry practitioner's fees for providing executry services to that client provided that—
    - (i) an itemised bill has been delivered to the client; and
    - (ii) the client, having been informed in writing that the money is to be withdrawn or transferred for this purpose, has made no objection within a reasonable time of being so informed.
- (4) Subject to paragraph (5), an executry practitioner shall not cause or permit any client account to become overdrawn and, in the event of a client account becoming overdrawn, shall immediately upon discovery take all such proper steps as are necessary to clear the overdraft.
- (5) Paragraph (4) shall not apply where an overdraft is necessary to allow inheritance tax charged under the Inheritance Tax Act 1984(1) to be paid prior to the realisation of the executry estate.
- (6) Where the money has been withdrawn from a client account wrongfully, an executry practitioner shall promptly upon discovery credit the account with the amount of the withdrawal together with any interest due thereon in terms of regulation 22(9).

### **Keeping records**

- 24.**—(1) An executry practitioner shall, at all times, in connection with the provision of executry services by that executry practitioner, keep such accounts as may be necessary—
- (a) to show all the dealings of that executry practitioner with clients' money or with other money handled by that executry practitioner;
  - (b) to show separately in respect of each client all clients' money or other money handled by that executry practitioner; and
  - (c) to distinguish all clients' money from other money including money belonging to that executry practitioner,
- and shall keep such accounts at all times up to date.
- (2) Where an executry practitioner—
    - (a) withdraws from a client account any money in accordance with regulation 23(1); or
    - (b) credits a client account in accordance with regulation 23(5),
 the executry practitioner shall record the reason for the withdrawal or (as the case may be) the credit.
  - (3) An executry practitioner shall record all his dealings with clients' money in such of the following forms as may be appropriate—
    - (a) a clients' cash book (or a clients' column of a cash book);
    - (b) a clients' ledger (or a clients' column of a ledger); and
    - (c) a record of sums transferred from the ledger account of one client to that of another,
 and no other dealings shall be recorded in such clients' cash book, ledger or columns.
  - (4) An executry practitioner shall keep a record of all bills rendered to clients in respect of the provision of executry services which shall list each bill separately and to specify in each case the name of the client and the date of the bill.

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(1) 1984 c. 51. The citation of this Act has been amended by section 100(1)(a) of the Finance Act 1986 (c. 41).

(5) An executry practitioner shall keep a record listing all powers of attorney which have been granted in his favour together with details of the dates on which the powers of attorney were granted.

(6) At least once every month, an executry practitioner shall reconcile the balance of the clients' cash book (or clients' column of the cash book) with the balances shown on the client account statements produced by the relevant bank or building society, and shall keep in the cash book or other appropriate place a reconciliation statement showing that this has been done.

(7) The accounts, books, ledgers and records required for the purposes of this regulation need not be kept in documentary form but, where those accounts, books, ledgers and records are kept by means of a computer or in other non documentary form, the executry practitioner shall ensure that the information comprised in those accounts, books, ledgers and records can readily be produced in a form in which it can be taken away and in which it is visible and legible.

(8) A record required for the purposes of this regulation shall be preserved by the executry practitioner for at least 40 years from the date of the last entry in it.

### **Bridging loans**

**25.** An executry practitioner shall not enter into or maintain any contract or arrangement with a bank or other lender in terms of which the executry practitioner may draw down loan or overdraft facilities in his name for behoof of clients unless—

- (a) the executry practitioner shall in every case before drawing down any sums in terms of such contract or arrangement have intimated to the bank or other lender—
  - (i) the name and present address of the client for whom the loan or overdraft facilities are required; and
  - (ii) the arrangements for repayment of the loan or overdraft facilities; and
- (b) the contract or arrangement does not impose personal liability for repayment of any such loan or overdraft facilities on the executry practitioner.

### **Money laundering**

**26.—**(1) Every executry practitioner shall in respect of all other business carried on by the executry practitioner comply with the provisions of the Money Laundering Regulations 1993<sup>(2)</sup> as if such other business constituted relevant financial business within the meaning of those Regulations, but as if—

- (a) for the figure “1” where it appears in the second line of regulation 7(1) of those Regulations, there were substituted the figure “2”; and
- (b) regulation 12(4)(a) of those Regulations was deleted.

(2) For the avoidance of doubt, paragraph (1) is without prejudice to the application of the Money Laundering Regulations 1993 to relevant financial business.

### **Borrowing from clients**

**27.** An executry practitioner shall not borrow money from his client unless his client is in the business of lending money or his client has been independently advised in regard to the making of the loan.

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(2) [1993/1933](#).

### **Audit requirement**

**28.**—(1) An executry practitioner who, in the course of providing executry services as an executry practitioner, has handled clients' money during his accounting period, shall arrange for an accountant to—

- (a) inspect all accounts, books and other records required under these Regulations to be kept during that accounting period;
- (b) send to the Board, within 6 months of the end of that accounting period, a report on the extent to which that executry practitioner has
  - (i) during that accounting period, complied with the requirements of the regulations in this Part;
  - (ii) during that accounting period, maintained adequate arrangements to enable the executry practitioner so to comply; and
  - (iii) provided the accountant with all information and explanations which are, to the best of the accountant's knowledge and belief, necessary for the purpose of making a report; and
- (c) send to the Board a list of all powers of attorney in the executry practitioner's favour which are held or granted during that accounting period.

(2) An executry practitioner shall make available for inspection by the Board, at such times and places as may be specified by the Board, and in any event every five years, any accounts, books and other records which he is required to keep under these Regulations.

(3) For the purposes of this regulation—

“accountant” means a person who is qualified to be appointed as an auditor under paragraph 13(2) of Schedule 1 to the Act; and

“accounting period” means—

- (a) a period of not less than 6 months and not more than 18 months, beginning with the date on which he is registered by the Board as an executry practitioner under section 18(2); and
- (b) any successive periods of not more than 12 months beginning immediately after the end of the previous accounting period.