

*These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003*

# **PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Law Society functions etc. as to certain legal services***

##### ***Section 11 – Property etc. of the Scottish Conveyancing and Executry Services Board***

48. This section provides for the property, rights and liabilities of the Board to transfer to, and vest in the Scottish Ministers and enables the Scottish Ministers to transfer any such property or rights to the Law Society of Scotland.

##### ***Section 12 – Regulation by the Law Society of conveyancing and executry services***

49. The Law Society of Scotland and its Council already exercise functions in relation to solicitors under the Solicitors (Scotland) Act 1980. This section extends those responsibilities to include functions in relation to the provision of executry and conveyancing services by executry practitioners and qualified conveyancers (renamed “conveyancing practitioners” in this Act) under Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (see paragraphs 14(3) and 14(4) of schedule 4).

##### ***Section 13 – Scottish Solicitors’ Discipline Tribunal and certain practitioners***

50. The Scottish Conveyancing and Executry Services Board has to date handled all complaints against conveyancing and executry practitioners. By virtue of amendments in schedule 4 to section 20 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990), complaints against practitioners will now be handled on the same basis as complaints against solicitors, so that the Law Society of Scotland will deal with complaints against practitioners, and the Scottish Solicitors’ Discipline Tribunal will deal with more serious complaints. This section accordingly:
- extends the existing locus of the Tribunal in relation to complaints against solicitors to include complaints against conveyancing and executry practitioners;
  - provides that the Council of the Law Society of Scotland may make a complaint to the Tribunal against conveyancing and executry practitioners; and
  - extends the rule-making powers of the Tribunal to apply to the regulating, hearing and determining of inquiries into complaints against conveyancing and executry practitioners and appeals under section 20(11)(b) of the 1990 Act.

##### ***Section 14 – Exercise by certain practitioners of notarial and other functions***

51. This section provides practitioners with a limited range of notarial powers of direct relevance to their conveyancing duties with effect from the date of transfer of

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regulatory responsibility. The intention is that independent conveyancing practitioners, in particular, should be able to compete with solicitors on a level playing field. As independent conveyancing practitioners have not had the notarial powers required for certain conveyancing transactions, they have been obliged to date to engage the services of a notary in certain circumstances. Such action has been needed for example in cases where it has been necessary to notarise renunciations by a non-entitled spouse of occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the execution of a discharge of a burdens certificate under the Abolition of Feudal Tenure (Scotland) Act 2000.

52. This section also permits conveyancing practitioners to subscribe dispositions and standard securities, and executry practitioners to subscribe testamentary documents, on behalf of people who are blind or unable to write.

### ***Section 15 – The Historic Environment Advisory Council for Scotland***

53. This section provides for the creation of the Historic Environment Advisory Council for Scotland, a new advisory Non-Departmental Public Body.
54. *Subsection (1)* provides for the establishment of a body to be known as “the Historic Environment Advisory Council for Scotland”.
55. *Subsection (2)* introduces schedule 3 which makes detailed provisions concerning the constitution, status, and administration of such a body.

### ***Section 16 - The Advisory Council's Functions***

56. This section and schedule 3 sets out the scope of the functions of the new body.
57. *Subsections (1) and (2)* provide for the new body to provide advice to the Scottish Ministers on (a) issues affecting the historic environment and (b) how the functions of the Scottish Ministers exercisable in relation to the historic environment may be exercised effectively for the benefit of the historic environment.
58. *Subsection (3)* defines the historic environment to mean any or all structures and places in Scotland of historical, archaeological or architectural interest or importance
59. *Subsection (4)* provides that the new body provides advice whenever requested by Scottish Ministers or whenever the new body considers it appropriate to do so.