



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

#### *Establishment*

#### **1 The Scottish Legal Complaints Commission**

- (1) There is established a body to be known as the Scottish Legal Complaints Commission (referred to in this Act as “the Commission”).
- (2) Schedule 1 makes further provision about the status, constitution, proceedings etc. of the Commission.

#### *Conduct or services complaints against practitioners*

#### **2 Receipt of complaints: preliminary steps**

- (1) Where the Commission receives a complaint by or on behalf of any of the persons mentioned in subsection (2)—
  - (a) suggesting—
    - (i) professional misconduct or unsatisfactory professional conduct by a practitioner other than a firm of solicitors or an incorporated practice;
    - (ii) that a conveyancing practitioner or an executry practitioner has been convicted of a criminal offence rendering the practitioner no longer a fit and proper person to provide conveyancing services as a conveyancing practitioner or, as the case may be, executry services as an executry practitioner,(a complaint suggesting any such matter being referred to in this Part as a “conduct complaint”);

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- (b) suggesting that professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate (referred to in this Part as a “services complaint”),

it must, subject to subsection (3) and sections 3 and 4 and any provision in rules made under section 32(1) as to eligibility for making complaints, take the preliminary steps mentioned in subsection (4).

- (2) The persons are—
  - (a) as respects a conduct complaint, any person;
  - (b) as respects a services complaint—
    - (i) any person who appears to the Commission to have been directly affected by the suggested inadequate professional services;
    - (ii) the Lord Advocate;
    - (iii) the Advocate General for Scotland;
    - (iv) any judge (including a sheriff);
    - (v) the Auditor of the Court of Session;
    - (vi) the Auditor of any sheriff court;
    - (vii) the Scottish Legal Aid Board;
    - (viii) any relevant professional organisation.
- (3) The Commission is not to take the preliminary steps mentioned in subsection (4), and is not to take any further action under any other provision of this Part, in relation to any element of a conduct complaint which is about a practitioner acting in a judicial capacity in a court or tribunal specified by order by the Scottish Ministers.
- (4) The preliminary steps are—
  - (a) to determine whether or not the complaint is frivolous, vexatious or totally without merit;
  - (b) where the Commission determines that the complaint is any or all of these things, to—
    - (i) reject the complaint;
    - (ii) give notice in writing to the complainer and the practitioner that it has rejected the complaint as frivolous, vexatious or totally without merit (or two or all of these things).

### **3 Existence of specified regulatory scheme**

- (1) Where any element of a complaint referred to in section 2(1) is capable of being dealt with under a specified regulatory scheme, the Commission is prevented from dealing with the element but only to the extent that the element is capable of being dealt with under the specified regulatory scheme.
- (2) Where the circumstances referred to in subsection (1) apply, the Commission must give notice in writing to that effect to—
  - (a) the complainer and the practitioner;
  - (b) such other persons as may be specified by the Scottish Ministers by order.
- (3) Notice under subsection (2) must specify under which specified regulatory scheme the Commission considers the element is capable of being dealt with.
- (4) Where the circumstances referred to in subsection (1) apply, notice under subsection (2) must in addition specify that the fact that the Commission is prevented

by subsection (1) from dealing with the complaint to the extent that the complaint is capable of being dealt with under the specified regulatory scheme does not prevent the Commission taking the preliminary steps referred to in section 2(4) and dealing with the complaint under any provision of this Part to the extent that it is able.

- (5) In this section “specified regulatory scheme” means a scheme specified as such by the Scottish Ministers by order.

#### **4 Complaint not made timeously or made prematurely**

- (1) Where a complaint referred to in section 2(1) is not made timeously, the Commission is not to take the preliminary steps referred to in section 2(4) in relation to it, and is not to take any further action under any other provision of this Part (except this section), in relation to it.
- (2) Where a complaint referred to in section 2(1) is made prematurely, the Commission need not take the preliminary steps referred to in section 2(4) in relation to it, and need not take any further action under any other provision of this Part (except this section), in relation to it.
- (3) For the purposes of subsection (1), a complaint is not made timeously where—
- (a) rules made under section 32(1) fix time limits for the making of complaints;
  - (b) the complaint is made after the expiry of the time limit applicable to it;
  - (c) the Commission does not extend the time limit in accordance with the rules.
- (4) For the purposes of subsection (2), a complaint is made prematurely where—
- (a) the complainer has not previously communicated the substance of it to the practitioner, the practitioner’s firm or, as the case may be, where the practitioner is an employee of another practitioner that other practitioner (referred to in this Part as the “employing practitioner”) and given the practitioner, the firm or the employing practitioner what the Commission considers is a reasonable opportunity to deal with it;
  - (b) rules made under section 32(1) either—
    - (i) do not provide for circumstances in which the Commission will take the steps and further action referred to in that subsection; or
    - (ii) do provide for such circumstances but none is applicable in relation to the complaint.
- (5) Where the circumstances referred to in subsection (1) or (2) apply, the Commission must give notice in writing to the complainer and practitioner to that effect.
- (6) Where the circumstances referred to in subsection (2) apply, notice under subsection (5) must specify whether or not the Commission is proceeding to take the preliminary steps referred to in section 2(4).

#### **5 Determining nature of complaint**

- (1) Where the Commission proceeds to determine under section 2(4) whether a complaint is frivolous, vexatious or totally without merit and determines that it is none of these things, it must determine whether the complaint constitutes—
- (a) a conduct complaint;
  - (b) a services complaint,

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including whether (and if so to what extent) the complaint constitutes separate complaints falling within more than one of these categories and if so which of the categories.

- (2) Where it appears to the Commission that the complaint may constitute both—
- (a) a conduct complaint; and
  - (b) a separate services complaint,
- it must consult, co-operate and liaise with the relevant professional organisation and have regard to any views expressed by the organisation on the matter before making a determination under subsection (1) as respects the complaint.
- (3) A relevant professional organisation must co-operate and liaise with the Commission in relation to subsection (2).

## **6 Complaint determined to be conduct complaint**

Where, or to the extent that, the Commission determines under section 5(1) that a complaint is a conduct complaint, it must—

- (a) remit the complaint to the relevant professional organisation to deal with (and give to the organisation any material which accompanies the conduct complaint);
- (b) give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination and specifying—
  - (i) the reasons for the determination;
  - (ii) that the conduct complaint is being remitted under this section for investigation and determination by the relevant professional organisation;
  - (iii) the relevant professional organisation to which it is being remitted;
  - (iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.

## **7 Services complaint: notice**

Where, or to the extent that, the Commission determines under section 5(1) that a complaint is a services complaint, it must give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination and specifying the reasons for the determination.

## **8 Services complaint: local resolution or mediation**

- (1) This section applies where the Commission determines under section 5(1) that a complaint by or on behalf of a person referred to in section 2(2)(b)(i) is a services complaint.
- (2) Where the Commission considers that either—
- (a) the complaint has been made prematurely (within the meaning of section 4(4)); or
  - (b) the practitioner, the practitioner's firm or the employing practitioner has made no attempt, or an insufficient attempt, to achieve a negotiated settlement with the complainer,

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the Commission may, by notice in writing to the complainer and the practitioner refer the complaint back to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner requesting that the practitioner, the firm or the employing practitioner attempt to achieve such a settlement.

- (3) Where the Commission refers a complaint back to the practitioner, the practitioner's firm or the employing practitioner under subsection (2), it may, by notice in writing, require the practitioner, the firm or the employing practitioner to give, before the end of such period being not less than 21 days as the notice specifies, an account and explanation of the steps which the practitioner, firm or employing practitioner has taken to attempt to achieve a negotiated settlement.
- (4) Where the Commission considers it appropriate to do so, it may, by notice in writing to the complainer and the practitioner, offer to mediate in relation to the complaint.
- (5) The Commission may enter into mediation in relation to a complaint only if both the complainer and the practitioner accept the offer made under subsection (4).
- (6) The Commission must discontinue mediation in relation to a complaint if either the complainer or the practitioner withdraws consent to the mediation and may do so in any other circumstances; and, if mediation is discontinued, the Commission must give notice in writing to the complainer and the practitioner of its decision.

## **9 Services complaint: Commission's duty to investigate and determine**

- (1) Where—
  - (a) the Commission does not refer a services complaint back to the practitioner, the practitioner's firm or the employing practitioner under section 8(2) (because it considers that the practitioner, firm or employing practitioner has made a sufficient attempt to achieve a negotiated settlement);
  - (b) the Commission refers a services complaint back to the practitioner, the practitioner's firm or the employing practitioner under that section but—
    - (i) no attempt to achieve a negotiated settlement takes place;
    - (ii) such an attempt takes place but is discontinued or a negotiated settlement is not accepted by both the practitioner and the complainer;
  - (c) mediation by virtue of section 8(5) in relation to the complaint—
    - (i) does not take place;
    - (ii) takes place but is discontinued or the outcome of the mediation is not accepted by both the complainer and the practitioner;
  - (d) the Commission determines under section 5(1) that a complaint by or on behalf of any person referred to in sub-paragraphs (ii) to (viii) of section 2(2) (b) is a services complaint,

the Commission must, subject to section 15(2) and (5), investigate the complaint and after giving the complainer and the practitioner an opportunity to make representations, subject to subsections (2) to (4), determine it by reference to what the Commission considers is fair and reasonable in the circumstances.

- (2) Where the complainer is a person referred to in section 2(2)(b)(i) the Commission must, subject to subsection (3), propose to the practitioner and the complainer a settlement as respects the complaint which it considers is fair and reasonable in the circumstances.

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- (3) Where the practitioner was, at the time the services were provided, an employee of an employing practitioner, a proposal under subsection (2) to the practitioner and the complainer must also be made to the employing practitioner.
- (4) Where the practitioner and the complainer, and where subsection (3) applies the employing practitioner, accept a settlement proposed by the Commission under subsection (2) as respects the complaint, the Commission is not to determine the complaint under subsection (1).

## **10 Commission upholds services complaint**

- (1) Where the Commission makes a determination under section 9(1) upholding a services complaint, it may take such of the steps mentioned in subsection (2) as it considers fair and reasonable in the circumstances.
- (2) The steps are, subject to subsection (3)—
  - (a) to determine that the amount of the fees and outlays to which the practitioner is entitled for the services provided to the client and to which the complaint relates, is to be—
    - (i) nil; or
    - (ii) such amount as the Commission 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) as appear to the Commission to be necessary to give effect to the determination;
  - (b) to direct the practitioner to secure the rectification at the practitioner’s own expense of any such error, omission or other deficiency arising in connection with the services as the Commission may specify;
  - (c) to direct the practitioner to take, at the practitioner’s own expense, such other action in the interests of the complainer as the Commission may specify;
  - (d) where the Commission considers that the complainer has been directly affected by the inadequate professional services, to direct the practitioner to pay compensation of such amount, not exceeding £20,000, as the Commission may specify to the complainer for loss, inconvenience or distress resulting from the inadequate professional services;
  - (e) where the Commission considers that the practitioner may not have sufficient competence in relation to any aspect of the law or legal practice, to report the matter to the relevant professional organisation.
- (3) Where the practitioner was, at the time when the services were provided, an employee (referred to in this section as an “employee practitioner”) of an employing practitioner—
  - (a) a direction under subsection (2)(a), (b) or (c) must be to the employing practitioner instead of the employee practitioner;
  - (b) a direction under subsection (2)(d)—
    - (i) may be to and direct either the employing practitioner or, if the Commission considers it appropriate, the employee practitioner to pay all of the compensation directed to be paid under that subsection in relation to the complaint concerned;
    - (ii) may be to and direct the employee practitioner to pay such part of the total amount of compensation directed to be paid under that subsection in relation to the complaint concerned as the Commission

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- considers appropriate and if it does so, must be to and direct the employing practitioner to pay the remainder of the total amount;
- (c) a copy of any report under subsection (2)(e) must be sent to the employing practitioner.
- (4) The Commission must, in considering what steps to take under subsection (2), take into account any—
- (a) prior direction by it under subsection (2)(d) that the employee practitioner concerned or, where subsection (3) applies, the employing practitioner, pay to the complainer an amount by way of compensation;
- (b) award of damages by the court to the complainer;
- (c) other compensation ordered (whether by determination, direction or otherwise) by a tribunal or other professional body to be paid to the complainer,
- in relation to the subject matter of the complaint.
- (5) The requirements referred to in subsection (2)(a) are to—
- (a) refund, whether wholly or to any specified extent any amount already paid by or on behalf of the client in respect of fees and outlays of the practitioner in connection with the services;
- (b) waive, whether wholly or to any specified extent, the right to recover the fees and outlays.
- (6) Before making a determination in accordance with subsection (2)(a), the Commission may submit the practitioner's accounts for the fees and outlays to the Auditor of the Court of Session for taxation.
- (7) The Scottish Ministers may by order, after consulting—
- (a) the relevant professional organisations;
- (b) such groups of persons representing consumer interests as they consider appropriate,
- amend subsection (2)(d) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

## **11 Fair and reasonable: matters to be taken into account by Commission**

In considering what is fair and reasonable in the circumstances, the Commission is to take into account the relevant law (including levels of damages awarded by courts in similar circumstances) and relevant codes of practice, professional rules, standards and guidance.

## **12 Services complaint: notice where not upheld or upheld**

- (1) The Commission must give notice in writing of a—
- (a) determination by it under section 9(1) not to uphold a services complaint;
- (b) determination by it under that section upholding any such complaint;
- (c) determination, direction or report by it under section 10(2),
- to the complainer and every practitioner specified in it and, where section 10(3) applies, to the employing practitioner by sending to each of them a copy of the determination, the direction or, as the case may be, the report.

- (2) Where the determination is made by a determination committee by virtue of paragraph 13(2)(d)(i) or, as the case may be, (ii) of schedule 1, notice under subsection (1) must specify the reasons for the determination.

### **13 Services complaint: reports**

- (1) The Commission may, if it considers it appropriate to do so in any particular case, publish a report of—
- (a) any mediation which has taken place by virtue of section 8(5) in relation to a services complaint, the outcome of which is accepted by both the complainer and the practitioner;
  - (b) an investigation of a services complaint under section 9 and—
    - (i) any settlement proposed under subsection (2) of that section as respects the complaint, which is accepted as mentioned in subsection (4) of that section;
    - (ii) any determination of the complaint under subsection (1) of that section;
  - (c) a determination, direction or report under section 10(2).
- (2) A report under subsection (1) must not (unless the complainer consents)—
- (a) mention the name of the complainer;
  - (b) include any particulars which, in the opinion of the Commission, are likely to identify the complainer.
- (3) A report under subsection (1) may only—
- (a) mention the name of the practitioner complained of; or
  - (b) include any particulars which, in the opinion of the Commission, are likely to identify the practitioner,
- if the practitioner consents or the condition in subsection (4) is met.
- (4) The condition is that—
- (a) the case is exceptional;
  - (b) in the opinion of the Commission, it is in the public interest for the identity of the practitioner concerned to be included in the report; and
  - (c) the Commission has given not less than 4 weeks notice in writing to the practitioner that it intends to identify the practitioner in the report, specifying the reasons for its decision.

### **14 Determination under section 9(1) or taking of steps under section 10(2): effect in relation to proceedings**

- (1) Neither the making of a determination under section 9(1) upholding a complaint, nor the taking of any steps under section 10(2) may be founded upon in any proceedings.
- (2) A direction under section 10(2)(d) to a practitioner to pay compensation to a complainer does not prejudice any right of the complainer to take proceedings against the practitioner for damages in respect of any loss which the complainer claims to have suffered; and any amount directed to be paid to the complainer under that section may be taken into account in the computation of any award of damages made to the complainer in any such proceedings.



## **15 Complaint appears during mediation or investigation to fall within different category**

- (1) Where a relevant professional organisation at any time during any mediation by it, or its investigation, of a conduct complaint remitted to it under section 6(a) considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a services complaint, it must—
  - (a) suspend the mediation or, as the case may be, the investigation;
  - (b) consult, co-operate and liaise with the Commission as respects the matter;
  - (c) send the complaint and any material which relates to it and which is in the organisation's possession to the Commission;
  - (d) give notice in writing to the complainer and the practitioner that it so considers and is so doing.
- (2) Where the Commission at any time during its mediation by virtue of section 8(5) in relation to, or investigation by virtue of section 9(1) of, a services complaint considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint, it must—
  - (a) suspend the mediation or investigation;
  - (b) send a copy of the complaint and any material which relates to it and which is in the Commission's possession to the relevant professional organisation;
  - (c) consult, co-operate and liaise with the relevant professional organisation as respects the matter;
  - (d) give notice in writing to the complainer, the practitioner and the relevant professional organisation that it so considers and is so doing.
- (3) Where, in the circumstances referred to in subsection (1) or (2) the Commission, having regard to the views expressed by the relevant professional organisation as respects the matter, considers that—
  - (a) its determination under section 5(1) as respects the complaint should be confirmed (to any extent), it must so determine; and the determination under this paragraph must specify the extent to which the determination under that section is confirmed;
  - (b) a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute—
    - (i) a conduct complaint constitutes instead a services complaint;
    - (ii) a services complaint constitutes instead a conduct complaint,it must determine accordingly.
- (4) Where, or to the extent that, the Commission determines under subsection (3)(a) to confirm to any extent its determination under section 5(1)—
  - (a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;
  - (b) any suspension under subsection (1)(a) or (2)(a) ceases.
- (5) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute a services complaint constitutes instead a conduct complaint, it must—
  - (a) remit the conduct complaint to the relevant professional organisation to deal with (and give to the organisation any material referred to in section 6(a));

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- (b) give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying—
  - (i) the reasons for the determination;
  - (ii) that the conduct complaint is being remitted under paragraph (a);
  - (iii) the relevant professional organisation to which it is being remitted;
  - (iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.
- (6) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute a conduct complaint constitutes instead a services complaint—
  - (a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;
  - (b) sections 8 to 12 apply to the services complaint as they apply where a determination is made under section 5(1) that a complaint constitutes a services complaint.

## **16 Power to monitor compliance with directions under section 10(2)**

- (1) The Commission must, by notice in writing, require every practitioner specified in any direction under section 10(2) to give, before the end of such period being not less than 21 days as the notice specifies, an account and explanation of the steps which the practitioner has taken to comply with the direction.
- (2) Where an appeal against any such direction is made under section 21(1), any notice under subsection (1) relating to the direction ceases to have effect pending the outcome of the appeal.

## **17 Power to examine documents and demand explanations in connection with conduct or services complaints**

- (1) Where the Commission is satisfied that it is necessary for it to do so for the purposes of section 2, 4, 5, 8, 9, 10, 15 or 16, it may give notice in writing in accordance with subsection (2) to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner.
- (2) Notice under subsection (1) may require—
  - (a) the production or delivery to any person appointed by the Commission, at a time and place specified in the notice, of all documents mentioned in subsection (3) which are in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner and which relate to the matters to which the complaint relates (whether or not they relate also to other matters);
  - (b) an explanation, within such period being not less than 21 days as the notice specifies, from the practitioner, the firm or, as the case may be, the employing practitioner regarding the matters to which the complaint relates.
- (3) The documents are—

- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner;
  - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the practitioner is the sole trustee or a co-trustee only with one or more of the practitioner's partners or employees or, as the case may be, where the practitioner is an incorporated practice of which the practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees.
- (4) Where the Commission is satisfied that it is necessary for it to do so for the purposes of section 2, 4, 5, 8, 9, 10 or 15, it may give notice in writing in accordance with subsection (5) to the complainer.
- (5) Notice under subsection (4) may require—
- (a) the production or delivery to any person appointed by the Commission at a time and place specified in the notice, of all documents mentioned in subsection (6) which are in the possession or control of the complainer and which relate to the matters to which the complaint relates (whether or not they relate to other matters);
  - (b) an explanation, within such period being not less than 21 days as the notice specifies, from the complainer regarding the matters to which the complaint relates.
- (6) The documents are all books, accounts, deeds, securities, papers and other documents in the possession or control of the complainer.
- (7) Schedule 2 makes further provision about the powers of the Commission under this section.

## **18 Power of Commission to recover certain expenses**

- (1) The Commission is, subject to subsection (2), entitled to recover from a practitioner, the practitioner's firm or, as the case may be, the employing practitioner, in respect of whom it has taken any action by virtue of section 17, any expenditure reasonably incurred by it in so doing.
- (2) Expenditure incurred in taking action by virtue of section 17 is recoverable under subsection (1) only where notice has been served under paragraph 2(a) of schedule 2 in connection with that action and either—
- (a) no application has been made in consequence under paragraph 3 of that schedule; or
  - (b) the court, on such an application, has made a direction under paragraph 4 of that schedule.

## **19 Documents and information from third parties**

- (1) Where the Commission has requested that documents or information in the possession or control of a person be produced for the purposes of an investigation by it under this Act and the person refuses or fails to produce the documents or information, the Commission may apply to the court for an order under subsection (2).

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- (2) An order by the court under this subsection may require a person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the Commission within such time as the court may order.
- (3) The court may make an order under subsection (2) only if—
  - (a) it appears—
    - (i) the documents sought are; or
    - (ii) the information sought is, relevant to the investigation; and
  - (b) it is in the public interest for the documents or information to be produced.
- (4) Where the Commission receives possession of any such documents or information which have been produced or delivered to it, it must without delay serve on the person from whom the documents or information were received, a notice giving particulars and the date on which it took possession.
- (5) Before the expiry of the period of 14 days after service of a notice under subsection (4) the person on whom the notice has been served may apply to the court for an order directing return of the documents or information to the person from whom they were received by the Commission or to such other person as the applicant may request; and on the hearing of any such application the court may make the order applied for or such other order as it thinks fit.
- (6) If no application is made to the court under subsection (5), or if the court on any such application directs that the documents or information in question remain in the custody or control of the Commission, the Commission may make enquiries to ascertain the person to whom they belong and may deal with the documents or information in accordance with the directions of that person.
- (7) This section does not apply to documents or information in the possession or control of—
  - (a) the person who made the complaint from which the investigation arises;
  - (b) the practitioner concerned;
  - (c) a relevant professional organisation.

## **20 Enforcement of Commission direction under section 10(2)**

A direction by the Commission under section 10(2) is enforceable in like manner as an extract registered decree arbitral in its favour bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

### *Appeals*

## **21 Appeal against Commission decisions**

- (1) Any person mentioned in subsection (2) may, with the leave of the court, appeal against any decision of the Commission under the preceding sections of this Part as respects a complaint on any ground set out in subsection (4).
- (2) Those persons are—
  - (a) the complainer;

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- (b) the practitioner to whom the complaint relates;
  - (c) the practitioner’s firm;
  - (d) the employing practitioner;
  - (e) the relevant professional organisation.
- (3) An appeal under subsection (1) must be made before the expiry of the period of 28 days beginning with the day on which notice of the decision was given to the complainer and the practitioner; but the court may, on cause shown, consider an appeal made after the expiry of that period.
- (4) The grounds referred to in subsection (1) are—
- (a) that the Commission’s decision was based on an error of law;
  - (b) that there has been a procedural impropriety in the conduct of any hearing by the Commission on the complaint;
  - (c) that the Commission has acted irrationally in the exercise of its discretion;
  - (d) that the Commission’s decision was not supported by the facts found to be established by the Commission.
- (5) The Commission is to be a party in any proceedings on an appeal under subsection (1).
- (6) In this section and in section 22, “decision” includes any determination, direction or other decision and also includes the making of any report under section 10(2)(e).

## **22 Appeal: supplementary provision**

- (1) On any appeal under section 21(1), the court may make such order as it thinks fit (including an order substituting its own decision for the decision appealed against).
- (2) Where such an order upholds a services complaint or confirms a decision of the Commission to uphold a services complaint, the court may direct that such of the steps mentioned in 10(2) as it considers fair and reasonable in the circumstances be taken.
- (3) On any appeal under section 21(1) the court may make such ancillary order (including an order as to the expenses of the appeal) as it thinks fit.
- (4) A decision of the court under this section is final.

*Handling by relevant professional organisations of conduct complaints*

## **23 Handling by relevant professional organisations of conduct complaints: investigation by Commission**

- (1) The Commission may, subject to subsection (4), carry out such investigation as appears to it to be appropriate of any complaint made to it by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person and remitted to a relevant professional organisation under section 6(a) or 15(5)(a) has been dealt with by the organisation (such a complaint being referred to in this Act as a “handling complaint”).
- (2) The Commission may decide—
  - (a) not to investigate a handling complaint;
  - (b) to discontinue the investigation of a handling complaint.

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- (3) If the Commission decides not to investigate, or to discontinue the investigation of, a handling complaint it must give notice in writing to—
- (a) the person who made the handling complaint;
  - (b) the relevant professional organisation;
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates,
- by sending to each of them a copy of the decision and specifying the reasons for the decision.
- (4) The Commission must not investigate a handling complaint where either—
- (a) the relevant professional organisation has not completed its investigation of the conduct complaint to which the handling complaint relates; or
  - (b) the handling complaint is made after the expiry of the period of 6 months after such date as the Scottish Ministers may specify by order,
- but paragraph (a) does not apply in any of the circumstances mentioned in subsection (5).
- (5) The circumstances are that—
- (a) the handling complaint is that the relevant professional organisation—
    - (i) has acted unreasonably in failing to start an investigation into the complaint; or
    - (ii) having started such an investigation, has failed to complete it within a reasonable time; or
  - (b) the Commission considers that, even though the complaint is being investigated by the organisation, an investigation by the Commission is justified.
- (6) Where the Commission decides that subsection (4)(a) does not prevent it investigating a handling complaint because any of the circumstances referred to in subsection (5) apply, it must give notice in writing to—
- (a) the person who made the handling complaint;
  - (b) the relevant professional organisation;
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates,
- by sending to each of them a copy of the decision and specifying the reasons for the decision.
- (7) An order under subsection (4)(b) may specify different dates for different purposes.
- (8) Where the Commission is conducting an investigation under this section, it may at any time make a written interim report in relation to the investigation and must send a copy of any such report to—
- (a) the person who made the handling complaint;
  - (b) the relevant professional organisation;
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (9) The Scottish Ministers may by order amend the period of time referred to in subsection (4)(b).

## **24 Investigation under section 23: final report and recommendations**

- (1) Where the Commission has completed an investigation under section 23 it must—
  - (a) make a written report of its conclusions;
  - (b) send a copy of the report to—
    - (i) the person who made the handling complaint;
    - (ii) the relevant professional organisation;
    - (iii) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (2) A report under this section may include one or more of the following recommendations—
  - (a) that the relevant professional organisation 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 Commission considers appropriate;
  - (b) that the conduct complaint be investigated further by the relevant professional organisation;
  - (c) that the conduct complaint be reconsidered by the relevant professional organisation;
  - (d) that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned;
  - (e) that the relevant professional organisation pay compensation of such amount, not exceeding £5000, as the Commission may specify to the person making the handling complaint for loss, inconvenience or distress resulting from the way in which the conduct complaint was handled by the organisation;
  - (f) that the relevant professional organisation pay to the person making the handling complaint an amount specified by the Commission by way of reimbursement of the cost, or part of the cost, of making the handling complaint.
- (3) Where a report under this section includes any recommendation, the report must state the reasons for making the recommendation.
- (4) A relevant professional organisation to whom a report is sent by the Commission under this section must have regard to the conclusions and recommendations set out in the report so far as relating to the organisation.
- (5) Where a report sent to a relevant professional organisation under this section includes a recommendation relating to it, the organisation must, before the end of the period of 3 months beginning with the date on which the report was sent, notify the Commission, the person who made the handling complaint and the practitioner concerned, in writing, of—
  - (a) the action which it has taken to comply with the recommendations or in consequence of further consideration of the matter by it;
  - (b) its decision not to comply wholly with a recommendation and any reason for that decision.
- (6) Where the Commission is either—
  - (a) notified under subsection (5)(b) that the relevant professional organisation has decided not to comply wholly with a recommendation; or

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- (b) of the opinion that the relevant professional organisation has not complied wholly with a recommendation before the end of the period of 3 months beginning with the date on which the report was sent to the organisation under this section,

the Commission may direct the professional organisation to comply with that recommendation if the Commission thinks fit; and the organisation must comply with the direction.

- (7) For the purposes of subsection (6), a “recommendation” means any recommendation referred to in paragraphs (a) to (c), (e) or (f) of subsection (2).
- (8) The Scottish Ministers may by order, after consulting—
  - (a) the relevant professional organisations;
  - (b) such groups of persons representing consumer interests as they consider appropriate,

amend subsection (2)(e) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

## **25 Failure to comply with recommendation**

- (1) If the Commission considers that a relevant professional organisation has failed to comply with a direction under section 24(6), the Commission may apply by petition to the court for the organisation to be dealt with in accordance with subsection (2).
- (2) Where such a petition is presented, the court may inquire into the matter and after hearing—
  - (a) any witnesses who may be produced against or on behalf of the professional organisation; and
  - (b) any statement that may be offered in defence,
 may order the organisation to comply with the recommendation with which the direction under section 24(6) is concerned.

## **26 Abolition of Scottish legal services ombudsman**

- (1) The office of the Scottish legal services ombudsman (“the ombudsman”) is abolished on such date as the Scottish Ministers may by order specify.
- (2) The Scottish Ministers may not make an order under subsection (1) unless the ombudsman has no exercisable functions.
- (3) The functions of the ombudsman cease to be exercisable except in relation to the advice, services and activities mentioned in section 77(2).

## *Finance*

## **27 Annual general levy**

- (1) Each—
  - (a) advocate practising as such;
  - (b) conveyancing practitioner or executry practitioner;



- (c) person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act;
  - (d) solicitor who has in force a practising certificate,
- must, subject to subsection (2) and section 29(2), pay to the Commission in respect of each financial year a contribution (referred to in this Part as “the annual general levy”).
- (2) Each relevant professional organisation—
- (a) must secure the collection by it, from all of the persons falling within the categories referred to in paragraphs (a) to (d) of subsection (1) as respects whom it is the relevant professional organisation, of the annual general levy due by them;
  - (b) must pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.
- (3) Any—
- (a) sum due to the Commission under subsection (2)(b);
  - (b) interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid,
- may be recovered by it (as a debt) from the relevant professional organisation which is liable under that subsection to pay the sum.
- (4) A relevant professional organisation may recover (as a debt), from any person falling within the categories referred to in paragraphs (a) to (d) of subsection (1) as respects whom it is the relevant professional organisation—
- (a) any sum due by the person to the Commission under that subsection;
  - (b) any interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid.
- (5) If any person who is liable under subsection (1) to pay the annual general levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct.

## **28 Complaints levy**

- (1) A practitioner against whom a services complaint is made must pay to the Commission, in the circumstances mentioned in subsection (2), a contribution in relation to the complaint (referred to in this Part as “the complaints levy”).
- (2) The circumstances are where—
- (a) any of the following applies—
    - (i) mediation by virtue of section 8(5) takes place in relation to the complaint and the outcome of the mediation is accepted by both the complainer and the practitioner;
    - (ii) a settlement proposed as respects the complaint by the Commission under section 9(2) is accepted as mentioned in section 9(4);
    - (iii) the Commission makes a determination under section 9(1) upholding the complaint; and
  - (b) the amount of the levy has not been determined as nil and the Commission does not in accordance with rules made under section 32(1) waive the requirement to pay the levy.

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- (3) Any—
- (a) sum due by a practitioner to the Commission under subsection (1);
  - (b) interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid,
- may be recovered by it (as a debt) from the practitioner.
- (4) If any person who is liable under subsection (1) to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct.

## **29 Amount of levies and consultation**

- (1) The amount of the—
- (a) annual general levy;
  - (b) complaints levy,
- in respect of each financial year is such amount as may be determined by the Commission, having had regard to any views expressed in its consultation under subsection (4) in respect of the financial year in question.
- (2) The amount of the annual general levy must be the same amount for each of the individuals who are liable under section 27(1) to pay it; but rules made under section 32(1) may provide for circumstances in which the Commission may waive a portion of the amount which would otherwise require to be paid.
- (3) The Commission may determine different amounts (including an amount of nil) for the complaints levy in different circumstances.
- (4) The Commission must, in January each year, consult each relevant professional organisation and its members on the Commission's proposed budget for the next financial year.
- (5) The proposed budget must—
- (a) include—
    - (i) an estimate as respects resource requirements;
    - (ii) the proposed amount of the annual general levy and the complaints levy;
  - (b) be accompanied by information as to the Commission's projected work plan for the next financial year.
- (6) Each relevant professional organisation must, for the purpose of informing the Commission in relation to—
- (a) the inclusion in the Commission's proposed budget for each financial year of the proposed amount of the annual general levy;
  - (b) the Commission's determination under subsection (1) of the amount of the annual general levy in respect of each financial year,
- provide the Commission with an estimate of the number of persons as respects whom it is the relevant professional organisation and who it anticipates should be liable under section 27(1) to pay the annual general levy for the financial year concerned.

- (7) The Commission must secure so far as is reasonably practicable that, taking one financial year with another, the amount of the annual general levy and the complaints levy is reasonably sufficient to meet its expenditure.
- (8) The Commission must, no later than 31 March in each year, publish the responses it has received in the consultation carried out by it under subsection (4) in the immediately preceding January.
- (9) Subsection (1) does not apply to responses which are subject to an express request in writing for confidentiality.
- (10) The Commission must lay a copy of the finalised budget before the Parliament no later than 30 April in each year.

### **30 Grants or loans by the Scottish Ministers**

- (1) The Scottish Ministers may make grants to the Commission of such amounts as they consider appropriate.
- (2) Any grant under this section may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.
- (3) For the purpose of the exercise of any of its duties or powers under this Part—
  - (a) the Commission may, subject to such conditions as the Scottish Ministers think fit, borrow from them;
  - (b) the Scottish Ministers may lend to the Commission, sums of such amounts as the Ministers may determine.
- (4) Any loan made in pursuance of subsection (3) is to be repaid to the Scottish Ministers at such times and by such methods, and interest on the loan is to be paid to them at such times and at such rates, as they may from time to time direct.

### **31 Guarantees**

- (1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by the Commission.
- (2) Immediately after any guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.
- (3) Where any sum is paid out in fulfilment of a guarantee under this section, the Commission must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—
  - (a) payments of such amount as they may so direct in or towards repayment of the sums so paid out;
  - (b) payments of interest, at such rate as they may so direct, on the amount outstanding for the time being in respect of sums so paid out.

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*Rules as to Commission's practice and procedure*

**32 Duty of Commission to make rules as to practice and procedure**

- (1) The Commission must make rules as to its practice and procedure and, as soon as practicable after making or varying those rules, publish them and make them available to the public in a form which is readily accessible.
- (2) Schedule 3 makes further provision as respects provision which—
  - (a) must be included;
  - (b) may in particular be included,in the rules.
- (3) The rules may make different provision for different categories of complaint.
- (4) The Commission must keep the rules under review and must vary the provisions of the rules whenever it considers it appropriate to do so.
- (5) The Commission must, before making rules or varying the rules, consult with—
  - (a) the Lord President of the Court of Session;
  - (b) the Scottish Ministers;
  - (c) the relevant professional organisations;
  - (d) such groups of persons representing consumer interests as it considers appropriate,as to the proposed content of the rules to be made or varied.

*Forwarding complaints, advice, monitoring etc.*

**33 Duty of relevant professional organisations to forward complaints to Commission**

Where a relevant professional organisation receives a complaint from a person other than the Commission about—

- (a) the conduct of, or any services provided by, a practitioner;
  - (b) its handling of a conduct complaint remitted to it under section 6(a) or 15(5)(a),
- it must without delay send the complaint and any material which accompanies it to the Commission.

**34 Commission's duty to provide advice**

- (1) The Commission must, so far as is reasonably practicable, provide advice to any person who requests it as respects the process of making a services complaint or a handling complaint to it.
- (2) Where the Commission receives a complaint suggesting what purports to be professional misconduct or unsatisfactory professional conduct by a practitioner who is a firm of solicitors or an incorporated practice—
  - (a) it must inform the person that a complaint to it suggesting such misconduct or such conduct may be made only against a named practitioner who is an individual;

- (b) where the complaint received is not about a named practitioner who is an individual, it must so far as is reasonably practicable offer advice to the person with a view to assisting the person to reformulate the complaint so that it is about such a named practitioner.
- (3) Where a person in requesting or being offered such advice expresses a preference for receiving it by a particular means (as, for example, in writing, by telephone, by means of a recording or an explanation in person), the Commission must, so far as is reasonably practicable, give effect to the preference.

### **35 Services complaints: monitoring, reports, protocols and information sharing**

- (1) The Commission must monitor practice and identify any trends in practice as respects the way in which practitioners have dealt with matters that result in services complaints being dealt with by the Commission under sections 8 to 12.
- (2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.
- (3) The Commission must—
  - (a) enter into protocols with the relevant professional organisations as respects the sharing of information by it with them in relation to—
    - (i) numbers of services complaints dealt with by it;
    - (ii) such trends as it may identify in relation to such complaints;
    - (iii) settlements proposed by it under section 9(2), which are accepted as mentioned in subsection (4) of that section;
    - (iv) the substance of any services complaints which might be relevant to section 31(3) of the 1986 Act;
    - (v) determinations by it under section 9(1) upholding services complaints;
    - (vi) failure by practitioners to comply with directions by it under section 10(2), notice by it under section 16 or 17(1) or requirements by it under section 37(3);
  - (b) share information with the relevant professional organisations in accordance with the protocols.
- (4) The relevant professional organisations must enter into protocols with the Commission for the purposes of subsection (3)(a).

### **36 Conduct complaints: monitoring, reports, guidance and recommendations**

- (1) The Commission must monitor practice and identify any trends in practice as respects the way in which—
  - (a) practitioners have dealt with matters that result in conduct complaints being remitted to the relevant professional organisations under section 6(a) or 15(5) (a);
  - (b) the relevant professional organisations have dealt with conduct complaints so remitted.
- (2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.
- (3) The Commission may—

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- (a) give guidance to the relevant professional organisations as to the timescales within which they should aim to complete their investigation of or, as the case may be, determine conduct complaints remitted to them under section 6(a) or 15(5)(a);
  - (b) make recommendations to any relevant professional organisation about the organisation's procedures for, and methods of dealing with, conduct complaints so remitted to it.
- (4) Each relevant professional organisation to which the Commission makes a recommendation under subsection (3)(b) must—
- (a) consider the recommendation;
  - (b) notify the Commission in writing of—
    - (i) the results of the consideration;
    - (ii) any action the organisation has taken or proposes to take in consequence of the recommendation.
- (5) The Commission may carry out, for any of the purposes of this section, audits of the records held by the relevant professional organisations relating to conduct complaints remitted to them under section 6(a) or 15(5)(a).

### **37 Obtaining of information from relevant professional organisations**

- (1) The Commission may require any relevant professional organisation to—
- (a) provide it with such information, being information which is within the knowledge of the organisation, as the Commission considers relevant for any of the purposes of section 23, 24 or 36;
  - (b) to produce to it such documents, being documents which are within the possession or control of the organisation, as the Commission considers relevant for any of those purposes.
- (2) The information required to be provided or the documents required to be produced under subsection (1) may include information or, as the case may be, documents obtained by the relevant professional organisation from a practitioner while investigating a conduct complaint against the practitioner remitted to it under section 6(a) or 15(5)(a); and the organisation must comply with such a requirement.
- (3) Where any information required by the Commission under subsection (1) is not within the knowledge of the relevant professional organisation, or any documents required to be produced under that subsection are not within the possession or control of the organisation, the Commission may require the practitioner concerned—
- (a) to provide it with that information in so far as it is within the knowledge of the practitioner;
  - (b) to produce to it those documents if they are within the practitioner's possession or control.
- (4) Schedule 2 makes further provision about the powers of the Commission under this section.

### **38 Efficient and effective working**

- (1) In relation to any investigation or report undertaken by it under this Act, the Commission must liaise with the relevant professional organisation with a view to

minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the relevant professional organisation.

- (2) In relation to any investigation or report undertaken by it under this Act, each relevant professional organisation must liaise with the Commission with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the Commission.

### **39 Monitoring effectiveness of guarantee funds etc.**

- (1) The Commission may monitor the effectiveness of—
- (a) the Scottish Solicitors Guarantee Fund vested in the Society and controlled and managed by the Council under section 43(1) of the 1980 Act (“the Guarantee Fund”);
  - (b) arrangements carried into effect by the Society under section 44(2) of that Act (“the professional indemnity arrangements”);
  - (c) any funds or arrangements maintained by any relevant professional organisation which are for purposes analogous to those of the Guarantee Fund or the professional indemnity arrangements as respects its members.
- (2) The Commission may make recommendations to the relevant professional organisation concerned about the effectiveness (including improvement) of the Guarantee Fund, the professional indemnity arrangements or any such funds or arrangements as are referred to in subsection (1)(c).
- (3) The Commission may request from the relevant professional organisation such information as the Commission considers relevant to its functions under subsections (1) and (2).
- (4) Where a relevant professional organisation fails to provide information requested under subsection (3), it must give reasons to the Commission in respect of that failure.

### **40 How practitioners deal with complaints: best practice notes**

The Commission may issue guidance to the relevant professional organisations or to practitioners as respects how practitioners deal with complaints made to them about—

- (a) their professional conduct or the professional services provided by them;
- (b) the professional conduct of, or professional services provided by, any of their employees who are practitioners,

and any such guidance may recommend or include recommendations as respects standards for systems by practitioners for dealing with such complaints.

### *Miscellaneous*

### **41 Power by regulations to amend duties and powers of Commission**

- (1) The Scottish Ministers may, after consulting—
- (a) the Commission;
  - (b) the relevant professional organisations;
  - (c) such other persons or groups of persons as they consider appropriate,

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by regulations modify the provisions of this Part for the purposes of adjusting the duties imposed, or the powers conferred, by it on the Commission (including imposing new duties or conferring new powers).

- (2) Regulations under subsection (1) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of that subsection (including modification of any enactment, instrument or document).

#### **42 Reports: privilege**

For the purposes of the law of defamation, the publication of any report under section 13(1), 23(8), 24, 35(2), 36(2) or paragraph 16 of schedule 1 is privileged unless the publication is proved to be made with malice.

#### **43 Restriction upon disclosure of information: Commission**

- (1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.
- (2) The information is information—
- (a) contained in a conduct complaint, services complaint or handling complaint;
  - (b) which is given to or obtained by the Commission or any person acting on its behalf in the course of, or for the purposes of—
    - (i) any consideration of such a complaint;
    - (ii) an investigation (including any report of such an investigation) into a services complaint or a handling complaint.
- (3) Such information may be disclosed—
- (a) for the purpose of enabling or assisting the Commission to exercise any of its functions;
  - (b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.
- (4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, the Commission is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

#### **44 Exemption from liability in damages**

- (1) Neither the Commission nor any person who is, or is acting as, a member of the Commission or an employee of the Commission is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Commission's functions.
- (2) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith;
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).



## **45 Giving of notices etc. under Part 1**

- (1) Any notice which is required under this Part to be given in writing is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (2) Any notice which is required under this Part to be given to any person—
  - (a) is duly given—
    - (i) where the person is not an incorporated practice, if it is left at, or delivered or sent by post to, the person’s last known place of business or residence;
    - (ii) where the person is an incorporated practice, if it is left at or delivered or sent by post to the practice’s registered office;
    - (iii) where the person is a practitioner who is a firm of solicitors or an incorporated practice, if it is sent to the person by electronic means but only if the practitioner agrees to that means of sending;
    - (iv) where the person is an individual, if it is sent to the person by electronic means but only if the individual agrees to that means of sending;
    - (v) to any person, if it is given in such other manner as may be prescribed by regulations by the Scottish Ministers;
  - (b) if permitted by paragraph (a) to be sent, and sent, by electronic means is, unless the contrary is proved, deemed to be delivered on the next working day which follows the day on which the notice is sent.
- (3) Regulations under subsection (2)(a)(v) may—
  - (a) in particular provide that notice required to be given to a person who is not an individual may be given by addressing or sending it to such person appointed by the person for that purpose or to such person falling within such other categories prescribed in the regulations as appear to the Scottish Ministers to be appropriate;
  - (b) make different provision for different purposes.
- (4) In subsection (2)(b), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

## **46 Interpretation of Part 1**

- (1) In this Part, unless the context otherwise requires—
  - “advocate” means a member of the Faculty of Advocates;
  - “annual general levy” has the meaning given by section 27(1);
  - “client”—
    - (a) (in relation to any matter in which the practitioner has been instructed) includes any person on whose behalf the person who gave the instructions was acting;
    - (b) where the practitioner is an employee of a person who is not a practitioner, includes (in relation to any matter in which the practitioner has been instructed by the employer) the employer;

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“complainer” means the person who makes the complaint and, where the complaint is made by the person on behalf of another person, includes that other person;

“complaint” includes any expression of dissatisfaction;

“complaints levy” has the meaning given by section 28(1);

“the Commission” means the Scottish Legal Complaints Commission;

“conduct complaint” has the meaning given by section 2(1)(a);

“conveyancing practitioner” means a person registered under section 17 of the 1990 Act in the register of conveyancing practitioners;

“the Council” means the Council of the Law Society of Scotland;

“the court” means the Court of Session;

“employing practitioner” has the meaning given by section 4(4)(a);

“executory practitioner” means a person registered under section 18 of the 1990 Act in the register of executory practitioners;

“handling complaint” has the meaning given by section 23(1);

“inadequate professional services”—

(a) means, as respects a practitioner who is—

(i) an advocate, professional services which are in any respect not of the quality which could reasonably be expected of a competent advocate;

(ii) a conveyancing practitioner or an executory practitioner, professional services which are in any respect not of the quality which could reasonably be expected of a competent conveyancing practitioner or, as the case may be, a competent executory practitioner;

(iii) a firm of solicitors or an incorporated practice, professional services which are in any respect not of the quality which could reasonably be expected of a competent firm of solicitors or, as the case may be, a competent incorporated practice;

(iv) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, professional services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right;

(v) a solicitor, professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor;

(b) includes any element of negligence in respect of or in connection with the services,

and cognate expressions are to be construed accordingly;

“incorporated practice” has the meaning given by section 34(1A)(c) of the 1980 Act;

“practising certificate” has the meaning given by section 4 of the 1980 Act;

“practitioner” means—

(a) an advocate and includes any advocate whether or not a member of the Faculty of Advocates at the time when it is suggested the conduct complained of occurred or the services complained of were provided and notwithstanding that subsequent to that time the advocate has ceased to be such a member;

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- (b) a conveyancing practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;
- (c) an executry practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;
- (d) a firm of solicitors, whether or not since that time there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner or the firm has ceased to practise;
- (e) an incorporated practice, whether or not since that time there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) of the 1980 Act or has been wound up;
- (f) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act and includes any such person, whether or not the person had acquired the right at that time and notwithstanding that subsequent to that time the person no longer has the right;
- (g) a solicitor, whether or not the solicitor had a practising certificate in force at that time and notwithstanding that subsequent to that time the name of the solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;

“relevant professional organisation” means, in relation to a complaint as respects a practitioner who is—

- (a) an advocate, the Faculty of Advocates;
- (b) a conveyancing practitioner, an executry practitioner, a firm of solicitors or an incorporated practice, the Council;
- (c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, the body which made a successful application under section 25 of that Act and of which the person is a member;
- (d) a solicitor, the Council;

“the roll” means the roll of solicitors kept by the Council by virtue of section 7(1) of the 1980 Act;

“services complaint” has the meaning given by section 2(1)(b);

“the Society” means the Law Society of Scotland;

“solicitor” means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of the 1980 Act;

“unsatisfactory professional conduct” means, as respects a practitioner who is—

- (a) an advocate, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable advocate;
- (b) a conveyancing practitioner or an executry practitioner, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner or, as the case may be, a competent and reputable executry practitioner;
- (c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of this Act, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable person exercising such a right;

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- (d) a solicitor, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor, but which does not amount to professional misconduct and which does not comprise merely inadequate professional services; and cognate expressions are to be construed accordingly.
- (2) For the avoidance of doubt, anything done by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not done in relation to any matter in which the Crown Counsel or procurator fiscal has been instructed by a client.
- (3) For the avoidance of doubt, the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not in itself capable of constituting professional misconduct or unsatisfactory professional conduct.
- (4) In subsections (2) and (3), “procurator fiscal” has the same meaning as in section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

## PART 2

### CONDUCT AND SERVICES COMPLAINTS ETC.: OTHER MATTERS

#### **47 Conduct complaints: duty of relevant professional organisations to investigate etc.**

- (1) Where a conduct complaint is remitted to a relevant professional organisation under section 6(a) or 15(5)(a), the organisation must, subject to section 15(1) and (6), investigate it.
- (2) After investigating a conduct complaint, the relevant professional organisation must make a written report to the complainer and the practitioner of—
- (a) the facts of the matter as found by the organisation;
  - (b) what action the organisation proposes to take, or has taken, in the matter.
- (3) Each relevant professional organisation must ensure that its procedures for dealing with conduct complaints do not conflict with the duty imposed on it by section 24(4) or (5) in relation to any report sent to it under that section or any direction by the Commission under section 24(6).
- (4) In this section and sections 48 to 52, words and expressions have the same meanings as in section 46.

#### **48 Conduct complaints and reviews: power of relevant professional organisations to examine documents and demand explanations**

- (1) Where a relevant professional organisation is satisfied that it is necessary for it to do so for the purposes of an investigation by it into a conduct complaint under section 47 or a review by it of a decision in relation to a conduct complaint, it may—
- (a) give notice in writing in accordance with subsection (2) to the practitioner, the practitioner’s firm or, as the case may be, the employing practitioner;
  - (b) give notice in writing in accordance with subsection (4) to the complainer.

- (2) Notice under subsection (1)(a) may require—
- (a) the production or delivery to any person appointed by the relevant professional organisation, at a time and place specified in the notice, of all documents mentioned in subsection (3) which are in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner and which relate to the matters to which the complaint relates (whether or not they relate also to other matters);
  - (b) an explanation, within such period being not less than 21 days as the notice specifies, from the practitioner, the firm or, as the case may be, the employing practitioner regarding the matters to which the complaint relates.
- (3) The documents are—
- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner;
  - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the practitioner is the sole trustee or a co-trustee only with one or more of the practitioner’s partners or employees or, as the case may be, where the practitioner is an incorporated practice of which the practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees.
- (4) Notice under subsection (1)(b) may require—
- (a) the production or delivery to any person appointed by the relevant professional organisation at a time and place specified in the notice, of all documents mentioned in subsection (5) which relate to the matters to which the complaint relates (whether or not they relate to other matters);
  - (b) an explanation, within such period being not less than 21 days as the notice specifies, from the complainer regarding the matters to which the complaint relates.
- (5) The documents are all books, accounts, deeds, securities, papers and other documents in the possession or control of the complainer.
- (6) Schedule 4 makes further provision about the powers of a relevant professional organisation under this section.

#### **49 Conduct complaints: financial impropriety**

- (1) If, in the course of an investigation into a conduct complaint under section 47, a relevant professional organisation has reasonable cause to believe that the practitioner, the practitioner’s firm (or any employee thereof) or, as the case may be, the employing practitioner, has been guilty of any financial impropriety it may apply to the court for an order under subsection (2).
- (2) An order under this subsection is that no payment be made by any banker, building society or other body named in the order out of—
- (a) any banking account in the name of such practitioner or firm; or
  - (b) any sum deposited in the name of such practitioner or firm,
- without the leave of the court.

## **50 Power of relevant professional organisations to recover certain expenses**

- (1) A relevant professional organisation is, subject to subsection (2), entitled to recover from a practitioner, the practitioner's firm or, as the case may be, the employing practitioner, in respect of whom it has taken any action by virtue of section 48(1)(a) or 49, any expenditure reasonably incurred by it in so doing.
- (2) Expenditure incurred in taking action by virtue of section 48(1)(a) is recoverable under subsection (1) only where notice has been served under paragraph 2(a) of schedule 4 in connection with that action and—
  - (a) no application has been made in consequence under paragraph 3 of that schedule; or
  - (b) the court, on such an application, has made a direction under paragraph 4 of that schedule.

## **51 Powers in relation to documents and information from third parties**

- (1) Where a relevant professional organisation has requested that documents or information in the possession or control of a person be produced for the purposes of an investigation by it into a conduct complaint under section 47 or a review by it of a decision in relation to a conduct complaint, and the person refuses or fails to produce the documents or information, the organisation may apply to the court for an order under subsection (2).
- (2) An order by the court under this subsection may require a person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the relevant professional organisation within such time as the court may order.
- (3) Subsections (3) to (7) of section 19 apply for the purposes of this section as they apply for the purposes of that section but subject to the modification that for the references in subsections (4) to (6) to “the Commission” substitute “the relevant professional organisation”.

## **52 Restriction upon disclosure of information: relevant professional organisations**

- (1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.
- (2) The information is information—
  - (a) contained in a conduct complaint;
  - (b) which is given to or obtained by a relevant professional organisation or any person acting on its behalf in the course of, or for the purposes of—
    - (i) any consideration of such a complaint;
    - (ii) an investigation (including any report of such an investigation) into such a complaint.
- (3) Such information may be disclosed—
  - (a) for the purpose of enabling or assisting the relevant professional organisation to exercise any of its functions in relation to such a complaint;
  - (b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.

- (4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, a relevant professional organisation is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

### **53 Unsatisfactory professional conduct: solicitors**

- (1) The 1980 Act is amended as follows.  
(2) After section 42, insert—

#### **“42ZA Unsatisfactory professional conduct: Council’s powers**

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner who is a solicitor is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—
- (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
  - (b) given the solicitor an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 53ZA, the Council—
- (a) must—
    - (i) notify the solicitor specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;
    - (ii) so investigate the complaint;
    - (iii) having so investigated the complaint and given the solicitor an opportunity to make representations, determine the complaint;
  - (b) may rely, in their investigation, on any findings in fact which the Tribunal makes available to them under section 53ZA(2) as respects the complaint.
- (3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—
- (a) shall censure the solicitor;
  - (b) may take any of the steps mentioned in subsection (4) which they consider appropriate.
- (4) The steps are—
- (a) where the Council consider that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, to direct the solicitor to undertake such education or training as regards the law or legal practice as the Council consider appropriate in that respect;
  - (b) subject to subsection (6), to direct the solicitor to pay a fine not exceeding £2,000;

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- (c) where the Council consider that the complainer has been directly affected by the conduct, to direct the solicitor to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the Court upholding a complaint against the solicitor of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).
- (6) The Council shall not direct the solicitor to pay a fine under subsection (4)(b) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of 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.
- (8) The Council shall intimate—
  - (a) a determination under subsection (1) or (2);
  - (b) any censure under subsection (3)(a);
  - (c) any direction under subsection (4),to the complainer and the solicitor specified in it by sending to each of them a copy of the determination, censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A solicitor in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—
  - (a) determination;
  - (b) direction (whether or not he is appealing against the determination).
- (10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.
- (11) Where the Council have upheld the conduct complaint but have not directed the solicitor under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.
- (12) A complainer to whom the Council have directed a solicitor under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection



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is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.

- (13) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)
  - (c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (14) A statutory instrument containing an order under—
- (a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (15) In this section, “complainer” means the person who made the complaint and, where the complaint was made by the person on behalf of another person, includes that other person.

**42ZB Unsatisfactory professional conduct: Council’s powers to monitor compliance with direction under section 42ZA(4)**

- (1) The Council shall, by notice in writing, require every solicitor who is specified in—
- (a) a direction made under section 42ZA(4); or
  - (b) such a direction as confirmed or varied on appeal by—
    - (i) the Tribunal; or
    - (ii) the Court,
- to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (2) Where an appeal is made under section 42ZA(9) or (12) or 54A(1) or (2) against a direction made under section 42ZA(4), any notice under subsection (1)(a) above relating to the direction shall cease to have effect pending the outcome of the appeal.”.
- (3) After section 53 (powers of Tribunal), insert—

**“53ZA Remission of complaint by Tribunal to Council**

- (1) Where, after holding an inquiry under section 53(1) into a complaint of professional misconduct against a solicitor, the Tribunal—
- (a) is not satisfied that he has been guilty of professional misconduct;
  - (b) considers that he may be guilty of unsatisfactory professional conduct,
- it must remit the complaint to the Council.

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- (2) Where the Tribunal remits a complaint to the Council under subsection (1), it may make available to the Council any of its findings in fact in its inquiry into the complaint under section 53(1).

**53ZB Powers of Tribunal on appeal: unsatisfactory professional conduct**

- (1) On an appeal to the Tribunal under section 42ZA(9) the Tribunal—
- (a) may quash or confirm the determination being appealed against;
  - (b) if it quashes the determination, shall quash the censure accompanying the determination;
  - (c) may quash, confirm or vary the direction being appealed against;
  - (d) may, where it considers that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, direct the solicitor to undertake such education or training as regards the law or legal practice as the Tribunal considers appropriate in that respect;
  - (e) may, subject to subsection (5), fine the solicitor an amount not exceeding £2000;
  - (f) may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (2) On an appeal to the Tribunal under section 42ZA(10) the Tribunal—
- (a) may quash the determination being appealed against and make a determination upholding the complaint;
  - (b) if it does so, may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
  - (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 42ZA(11) the Tribunal may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (4) On an appeal under section 42ZA(12) the Tribunal may quash, confirm or vary the direction being appealed against.
- (5) The Tribunal shall not direct the solicitor to pay a fine under subsection (1)(e) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (6) Any fine directed to be paid under subsection (1)(e) above shall be treated for the purposes of 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.

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- (7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The Scottish Ministers may by order made by statutory instrument—
  - (a) amend subsection (1)(e) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (9) A statutory instrument containing an order under—
  - (a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (10) In this section, “complainer” has the same meaning as in section 42ZA.

### **53ZC Enforcement of Council direction: unsatisfactory professional conduct**

Where a solicitor fails to comply with a direction given by the Council under section 42ZA(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the Court) before the expiry of the period specified in the notice relating to that direction given to him under section 42ZB(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.”.

- (4) After section 54 (appeals from decisions of Tribunal), insert—

### **“54A Appeals from decisions of Tribunal: unsatisfactory professional conduct**

- (1) A solicitor in respect of whom a decision has been made by the Tribunal under section 53ZB(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the Court against the decision.
- (2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53ZB to which this subsection applies is intimated to him, appeal to the Court against the decision.
- (3) Subsection (2) applies to the following decisions of the Tribunal under section 53ZB—
  - (a) a decision under subsection (1)(a) quashing the Council’s determination upholding the complaint;

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- (b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the solicitor pay compensation;
  - (c) a decision under subsection (1)(f) directing the solicitor to pay compensation;
  - (d) a decision under subsection (2)(b) not to direct the solicitor to pay compensation;
  - (e) a decision under subsection (2)(c) confirming the Council’s decision not to uphold the complaint;
  - (f) a decision under subsection (3) confirming the Council’s decision not to direct the solicitor to pay compensation;
  - (g) a decision under subsection (4) quashing the Council’s direction that the solicitor pay compensation or varying the amount of compensation directed to be paid.
- (4) On an appeal under subsection (1) or (2), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the Court under subsection (4) shall be final.
- (6) In this section, “complainer” has the same meaning as in section 42ZA.”.
- (5) After section 55 (powers of Court), insert—

**“55A Powers of Court: unsatisfactory professional conduct**

- (1) In the case of unsatisfactory professional conduct by a solicitor the Court may—
- (a) fine the solicitor an amount not exceeding £2000;
  - (b) where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
  - (c) find the solicitor liable in any expenses which may be involved in the proceedings before it.
- (2) A decision of the Court under subsection (1) shall be final.
- (3) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (1)(a) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1) (b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (4) A statutory instrument containing an order under—
- (a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

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- (b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(5) In this section, “complainer” has the same meaning as in section 42ZA.”.

- (6) In section 65(1) (interpretation), after the definition of “unqualified person” insert “; “unsatisfactory professional conduct” as respects a solicitor has the meaning given (as respects a practitioner who is a solicitor) by section 46 of the 2007 Act”.

#### **54 Unsatisfactory professional conduct: conveyancing or executry practitioners**

- (1) The 1990 Act is amended as follows.
- (2) After section 20 (professional misconduct etc. by conveyancing or executry practitioners), insert—

##### **“20ZA Remission of complaint by Tribunal to Council**

- (1) Where, after holding an inquiry under section 20(2A) into a complaint of professional misconduct against a practitioner, the Tribunal—
  - (a) are not satisfied that he has been guilty of professional misconduct;
  - (b) consider that he may be guilty of unsatisfactory professional conduct, they must remit the complaint to the Council.
- (2) Where the Tribunal remit a complaint to the Council under subsection (1), they may make available to the Council any of their findings in fact in their inquiry into the complaint under section 20(2A).

##### **20ZB Unsatisfactory professional conduct**

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—
  - (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
  - (b) given the practitioner an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 20ZA, the Council—
  - (a) must—
    - (i) notify the practitioner specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;
    - (ii) so investigate the complaint;
    - (iii) having so investigated the complaint and given the practitioner an opportunity to make representations, determine the complaint;

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- (b) may rely, in their investigation, on any findings in fact which the Tribunal make available to them under section 20ZA(2) as respects the complaint.
- (3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—
  - (a) shall censure the practitioner;
  - (b) may take any of the steps mentioned in subsection (4) which they consider appropriate.
- (4) The steps are—
  - (a) where the Council consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, to direct him to undertake such education or training as regards the law or legal practice concerned as the Council consider appropriate in that respect;
  - (b) subject to subsection (6) below, to direct the practitioner to pay a fine not exceeding £2,000;
  - (c) where the Council consider that the complainer has been directly affected by the conduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the court upholding a complaint against the practitioner of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).
- (6) The Council shall not direct the practitioner to pay a fine under subsection (4)(b) above where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of 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.
- (8) The Council shall intimate—
  - (a) a determination under subsection (1) or (2);
  - (b) any censure under subsection (3)(a);
  - (c) any direction under subsection (4),to the complainer and the practitioner by sending to each of them a copy of the determination, the censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A practitioner in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days

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beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—

- (a) determination;
- (b) direction (whether or not he is appealing against the determination).

- (10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.
- (11) Where the Council have upheld the conduct complaint but have not directed the practitioner under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.
- (12) A complainer to whom the Council have directed a practitioner under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.
- (13) The Scottish Ministers may by order made by statutory instrument—
  - (a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)
  - (c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (14) A statutory instrument containing an order under—
  - (a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**20ZC Unsatisfactory professional conduct: Council's powers to monitor compliance with direction under section 20ZB(4)**

- (1) The Council shall, by notice in writing, require every practitioner who is specified in—
  - (a) a direction made under section 20ZB(4); or
  - (b) such a direction as confirmed or varied on appeal by—
    - (i) the Tribunal; or
    - (ii) the court,to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.

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(2) Where an appeal is made under section 20ZB(9) or (12) or 20D(1) or (2) against a direction made under section 20ZB(4), any notice under subsection (1) above relating to the direction shall cease to have effect pending the outcome of the appeal.”.

(3) After section 20A (review by Council of certain of their decisions), insert—

**“20B Unsatisfactory professional conduct: powers of Tribunal on appeal**

- (1) On an appeal to the Tribunal under section 20ZB(9) the Tribunal—
- (a) may quash or confirm the determination being appealed against;
  - (b) if they quash the determination, shall quash the censure accompanying the determination;
  - (c) may quash, confirm or vary the direction being appealed against;
  - (d) may, where they consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, direct him to undertake such education or training as regards the law or legal practice concerned as the Tribunal consider appropriate in that respect;
  - (e) may, subject to subsection (5), fine the practitioner an amount not exceeding £2000;
  - (f) may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (2) On an appeal to the Tribunal under section 20ZB(10) the Tribunal—
- (a) may quash the determination being appealed against and make a determination upholding the complaint;
  - (b) if they do so, may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
  - (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 20ZB(11) the Tribunal may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (4) On an appeal under section 20ZB(12) the Tribunal may quash, confirm or vary the direction being appealed against.
- (5) The Tribunal shall not direct the practitioner to pay a fine under subsection (1) (e) where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.



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- (6) Any fine directed to be paid under subsection (1)(e) shall be treated for the purposes of 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.
- (7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The Scottish Ministers may by order made by statutory instrument—
  - (a) amend subsection (1)(e) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (9) A statutory instrument containing an order under—
  - (a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

### **20C Unsatisfactory professional conduct: enforcement of Council direction**

Where a practitioner fails to comply with a direction given by the Council under section 20ZB(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the court) before the expiry of the period specified in the notice relating to that direction given to the practitioner under section 20ZC(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

### **20D Unsatisfactory professional conduct: appeal from decisions of Tribunal**

- (1) A practitioner in respect of whom a decision has been made by the Tribunal under section 20B(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the court against the decision.
- (2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 20B to which this subsection applies is intimated to him, appeal to the court against the decision.
- (3) Subsection (2) applies to the following decisions of the Tribunal under section 20B—
  - (a) a decision under subsection (1)(a) quashing the Council's determination upholding the complaint;

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- (b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the practitioner pay compensation;
  - (c) a decision under subsection (1)(f) directing the practitioner to pay compensation;
  - (d) a decision under subsection (2)(b) not to direct the practitioner to pay compensation;
  - (e) a decision under subsection (2)(c) confirming the Council’s decision not to uphold the complaint;
  - (f) a decision under subsection (3) confirming the Council’s decision not to direct the practitioner to pay compensation;
  - (g) a decision under subsection (4) quashing the Council’s direction that the practitioner pay compensation or varying the amount of compensation directed to be paid.
- (4) On an appeal under subsection (1) or (2), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the court under subsection (4) shall be final.

### **20E Unsatisfactory professional conduct: powers of court on appeal**

- (1) On an appeal under section 20D, the court may—
- (a) fine the practitioner an amount not exceeding £2000;
  - (b) where it considers that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
  - (c) find the practitioner liable in any expenses which may be involved in the proceedings before it.
- (2) A decision of the court under subsection (1) shall be final.
- (3) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (1)(a) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (4) A statutory instrument containing an order under—
- (a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

**55 Report by Commission to Council under section 10(2)(e)**

(1) After section 42ZB of the 1980 Act (as inserted by section 53(2) of this Act), insert—

**“42ZC Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council’s powers**

- (1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner who is a solicitor, they may direct him to undertake such education or training as regards the law or legal practice as the Council consider appropriate in the circumstances.
- (2) The Council shall by notice in writing—
  - (a) intimate a direction under subsection (1) to the solicitor;
  - (b) require the solicitor to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (3) Where an appeal is made under section 42ZD(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

**42ZD Direction under section 42ZC(2): appeal by practitioner**

- (1) A solicitor in respect of whom a direction has been made under section 42ZC(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.
- (2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.
- (3) The solicitor may, before the expiry of the period of 21 days beginning with the day on which the Tribunal’s decision under subsection (2) is intimated to him, appeal to the Court against the decision.
- (4) On an appeal to the Court under subsection (3), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the Court on an appeal under subsection (3) shall be final.”.

(2) After section 20ZC of the 1990 Act (as inserted by section 54(2) of this Act), insert—

**“20ZD Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council’s powers**

- (1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner, they may direct him to undertake such education or training as regards conveyancing law or legal practice or, as the case may be, executry law or legal practice as they consider appropriate in the circumstances.
- (2) The Council shall by notice in writing—

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- (a) intimate a direction under subsection (1) to the practitioner;
  - (b) require the practitioner to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (3) Where an appeal is made under section 20ZE(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

**20ZE Direction under section 20ZD(1): appeal by practitioner**

- (1) A practitioner in respect of whom a direction has been made under section 20ZD(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.
- (2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.
- (3) The practitioner may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the court against the decision.
- (4) On an appeal to the court under subsection (3), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the court on an appeal under subsection (3) shall be final.”.

**56 Powers to fine and award compensation for professional misconduct etc.**

- (1) In section 53 of the 1980 Act (powers of Tribunal)—
  - (a) in subsection (2), after paragraph (ba) insert—
    - “(bb) where the solicitor has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;”;
  - (b) after subsection (7B) (as inserted by paragraph 1(19)(b) of schedule 5 to this Act), insert—
    - “(7C) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bb) of subsection (2) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate.
    - (7D) A statutory instrument containing an order under subsection (7C) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”;

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- (c) after subsection (8), insert—
  - “(9) In subsection (2)(bb), “complainer” has the same meaning as in section 42ZA.”.
- (2) In section 55 of the 1980 Act (powers of Court)—
  - (a) in subsection (1)—
    - (i) after paragraph (bb), insert—
      - “(bc) where the Court considers that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the misconduct; or”;
    - (ii) in paragraph (c), after “solicitor” insert “an amount not exceeding £10,000”;
  - (b) after subsection (4) insert—
    - “(5) The Scottish Ministers may by order made by statutory instrument—
      - (a) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bc) of subsection (1) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate;
      - (b) amend paragraph (c) of subsection (1) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money.
  - (6) A statutory instrument containing an order under—
    - (a) subsection (5)(a) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament;
    - (b) subsection (5)(b) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
  - (7) In this section, “complainer” has the same meaning as in section 42ZA.”.
- (3) In section 20 of the 1990 Act (professional misconduct, etc.)—
  - (a) in subsection (2), after paragraph (c) insert—
    - “(ca) where the Council consider that the complainer has been directly affected by the professional misconduct or, as the case may be, the matter referred to in paragraph (d) of subsection (1), to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Council may specify to the complainer for loss, inconvenience or distress resulting from the misconduct or, as the case may be, the matter;
    - (cb) subject to subsection (2ZA) below, to impose on the practitioner a fine not exceeding £2,000;”;
  - (b) after that subsection, insert—

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“(2ZA) The Council shall not impose a fine under subsection (2)(cb) above where, in relation to the subject matter of the complaint, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

(2ZB) Any fine imposed under subsection (2)(cb) above shall be treated for the purposes of 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.”;

(c) in subsection (2B), after paragraph (a) insert—

“(aa) where the practitioner has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;”;

(d) after subsection (11F) (as inserted by paragraph 3(4)(k) of schedule 5 to this Act), insert—

“(11G) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (2) (ca) or (2B)(aa) by substituting for the amount for the time being specified in that provision such other amount as they consider appropriate.

(11H) A statutory instrument containing an order under subsection (11G) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

**57      Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct**

(1) In section 54 of the 1980 Act (appeals from decisions of Tribunal in cases other than unsatisfactory professional conduct)—

(a) after subsection (1), insert—

“(1A) A solicitor or an incorporated practice may, before the expiry of the period of 21 days beginning with the day on which any decision by the Tribunal mentioned in subsection (1B) is intimated to him or, as the case may be, it appeal to the Court against the decision.

(1B) The decision is—

(a) where the Tribunal was satisfied as mentioned in section 53(1)(a), the finding that the solicitor has been guilty of professional misconduct;

(b) where the Tribunal was satisfied as mentioned in section 53(1)(d), the finding that the incorporated practice has failed to comply with any provision of this Act or of any rule made under this Act applicable to the practice;

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- (c) in any case falling within paragraph (a) or (b), or where the decision was made because of the circumstances mentioned in section 53(1)(b) or (c), any decision under section 53(2) or (5).
- (1C) The Council may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53(2) or (5) is intimated to them, appeal to the Court against the decision; but the Council may not appeal to the Court against a decision of the Tribunal under section 53(2)(bb).
- (1D) Where the Tribunal has found that a solicitor has been guilty of professional misconduct but has not directed him under section 53(2)(bb) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's finding is intimated to him, appeal to the Court against the decision of the Tribunal not to make a direction under that subsection.
- (1E) A complainer to whom the Tribunal has directed a solicitor under section 53(2)(bb) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Court against the amount of the compensation directed to be paid.
- (1F) On an appeal under any of subsections (1A) to (1E), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.
- (1G) A decision of the Court under subsection (1A), (1B), (1C), (1D), (1E) or (1F) shall be final.”;
- (b) in subsection (2), after paragraph (b) insert “;
  - (c) the Tribunal has exercised the power conferred by section 53(6B) to direct that its order shall take effect on the day on which it is intimated to the solicitor, firm of solicitors or incorporated practice concerned, the solicitor, firm of solicitors or incorporated practice may, before the expiry of the period of 21 days beginning with that day, apply to the court for an order varying or quashing the direction in so far as it relates to the day on which the order takes effect”;
- (c) after that subsection, insert—
  - “(2A) In subsections (1D) and (1E), “complainer” has the same meaning as in section 42ZA.
  - (2B) Subsection (1) does not apply to any element of a decision of the Tribunal to which subsections (1A) to (1G) and paragraph (c) of subsection (2) apply.
  - (2C) Subsections (1A) to (1G), and paragraph (c) of subsection (2), apply to any element of a decision of the Tribunal which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.

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(2) In section 20 of the 1990 Act (professional misconduct etc. by conveyancing or executry practitioners)—

(a) after subsection (8), insert—

“(8A) Where the Council are satisfied that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner, the practitioner may—

- (a) before the expiry of the period of 21 days beginning with the day on which the finding by the Council to that effect is intimated to him, apply to the Council for a review by them of the finding;
- (b) before the expiry of the period of 21 days beginning with the day on which the outcome of the review is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash or confirm the decision.”;

(b) after subsection (11), insert—

“(11ZA) Where the Council find that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1) (d) apply as respects a practitioner but do not direct him under subsection (2)(ca) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Council’s finding is intimated to him, apply to the Council for a review by them of their decision not to direct the practitioner under subsection (2)(ca) to pay compensation.

(11ZB) A complainer to whom the Council have directed a practitioner under subsection (2)(ca) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, apply to the Council for a review by them of the direction.

(11ZC) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of the review under subsection (11ZA) or (11ZB) is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash, confirm or vary the decision.”;

(c) in subsection (11A)—

(i) in paragraph (a), after “subsection” insert “(8A)(b) or”;

(ii) after that paragraph, insert—

“(aa) a finding by the Tribunal that a practitioner is guilty of professional misconduct or that the circumstances mentioned in subsection (1)(d) apply as respects the practitioner; or”;

(iii) for the words “or, as the case may be,” substitute “the finding referred to in paragraph (aa) or, as the case may be, the decision”;

(d) after that subsection, insert—

“(11B) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of any appeal under



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subsection (11ZC) is intimated to him, appeal to the court against the Tribunal's decision in the appeal.

(11C) Where after holding an inquiry into a complaint against a practitioner, the Tribunal find that he has been guilty of professional misconduct or that the circumstances referred to in subsection (2A)(b) apply as respects him, but do not direct the practitioner under subsection (2B)(aa) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's finding is intimated to him, appeal to the court against the decision of the Tribunal not to make a direction under that subsection.

(11D) A complainer to whom the Tribunal have directed a practitioner under subsection (2B)(aa) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the court against the amount of the compensation directed to be paid.

(11E) In an appeal under subsection (11C) or (11D), the court may make such order in the matter as it thinks fit.”

### PART 3

#### LEGAL PROFESSION: OTHER MATTERS

#### 58 Constitution of Scottish Solicitors' Discipline Tribunal

(1) Schedule 4 to the 1980 Act is amended as follows.

(2) For paragraph 1 substitute—

“1 The Tribunal shall consist of not more than 28 members.

1A The Tribunal shall consist of equal numbers of—

(a) members (in this Part referred to as “solicitor members”) appointed by the Lord President, who are solicitors recommended by the Council as representatives of the solicitors' profession throughout Scotland; and

(b) members (in this Part referred to as “non-lawyer members”) appointed by the Lord President after consultation with the Scottish Ministers, who are not—

(i) solicitors;

(ii) advocates;

(iii) conveyancing practitioners or executry practitioners, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (“the 1990 Act”);

(iv) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.

1B The validity of any proceedings of the Tribunal is not affected by a vacancy in membership of the Tribunal nor by any defect in the appointment of a member.

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1C The Scottish Ministers may by order made by statutory instrument amend paragraph 1 so as to vary the maximum number of members of the Tribunal.

1D A statutory instrument containing an order made under paragraph 1C is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(3) In paragraph 2(a), for “lay” substitute “non-lawyer”.

(4) In paragraph 3, for “lay” substitute “non-lawyer”.

(5) In paragraph 5—

(a) in sub-paragraph (b), for “1 lay member is” substitute “2 solicitor members are”;

(b) for sub-paragraph (c) substitute—

“(c) at least 2 non-lawyer members are present.”;

(c) sub-paragraph (d) is repealed.

(6) In paragraph 6, for “lay” substitute “non-lawyer”.

## 59 **Scottish Solicitors Guarantee Fund: borrowing limit**

In paragraph 2(2) of Schedule 3 (Scottish Solicitors Guarantee Fund) to the 1980 Act, for “£20,000” substitute “£1,250,000”.

## 60 **Safeguarding interests of clients**

(1) The 1980 Act is amended as follows.

(2) In section 45 (safeguarding interests of clients of solicitors struck off or suspended)—

(a) after subsection (4), insert—

“(4A) Where—

(a) a solicitor is restricted from acting as a principal; and

(b) immediately before the restriction the solicitor was a sole solicitor,

the right to operate on, or otherwise deal with, any client account in the name of the solicitor or the solicitor’s firm shall on the occurrence of those circumstances vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person until such time as the Council have approved acceptable other arrangements in respect of the client account.”;

(b) in subsection (5), after the definition of “material date”, insert—

““principal” means a solicitor who is a sole practitioner or is a partner in a firm of two or more solicitors or is a director of an incorporated practice which is a company or a solicitor who is a member of a multi-national practice having its principal place of business in Scotland;”.

## **61 Offence for unqualified persons to prepare certain documents**

In section 32(2) of the 1980 Act (offence for unqualified persons to prepare certain documents), after paragraph (e) add “; or

- (f) to a member of a body which has made a successful application under section 25 of the 1990 Act but only to the extent to which the member is exercising rights acquired by virtue of section 27 of that Act”.

## **62 Notaries public to be practising solicitors**

- (1) The 1980 Act is amended as follows.
- (2) In section 57(2), after “solicitor” insert “qualified to practise in accordance with section 4”.
- (3) In section 58, after subsection (4) insert—
  - “(5) Where a person who is a solicitor and a notary public no longer has in force a practising certificate, the Council shall forthwith remove the person’s name from the register of notaries public.
  - (6) If the person mentioned in subsection (5) becomes qualified to practise as a solicitor in accordance with section 4, the Council shall restore the person’s name to the register of notaries public.”.

## **63 Regulation of notaries public**

After section 59 of the 1980 Act, insert—

### **“59A Rules regarding notaries public**

- (1) Subject to subsections (2) and (3), the Council may, if they think fit, make rules for regulating in respect of any matter the admission, enrolment and professional practice of notaries public.
- (2) The Council shall, before making any rules under this section—
  - (a) send to each notary public a draft of the rules; and
  - (b) take into consideration any representations made by any notary public on the draft.
- (3) Rules made under this section shall not have effect unless the Lord President, after considering any representations the Lord President thinks relevant, has approved the rules so made.
- (4) If a notary public fails to comply with any rule made under this section that failure may be treated as professional misconduct or unsatisfactory professional conduct on the part of the solicitor who is the notary public.”.

**PART 4**

## LEGAL AID

**64 Criminal legal aid in solemn proceedings**

- (1) The 1986 Act is amended as follows.
- (2) In section 22(1)(b)(i) (automatic availability of criminal legal aid), for “23(1)(a)” substitute “23A(1)”.
- (3) In section 23 (power of the court to grant legal aid)—
  - (a) paragraph (a) of subsection (1); and
  - (b) paragraph (a) of subsection (2),
 are repealed.
- (4) After that section, insert—

**“23A Legal aid in solemn proceedings**

- (1) Criminal legal aid shall be available on an application made to the Board, where a person is being prosecuted under solemn procedure, if the Board is satisfied after consideration of the person’s financial circumstances that the expenses of the case cannot be met without undue hardship to the person or the person’s dependants.
- (2) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.
- (3) The Board may require a person receiving legal aid under subsection (1) to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive criminal legal aid.
- (4) The Board shall establish a procedure under which any person whose application for legal aid under subsection (1) has been refused may apply to the Board for a review of the application.
- (5) The Board shall establish a procedure under which any person receiving criminal legal aid under subsection (1) which is subject to conditions by virtue of subsection (2) may apply to the Board for a review of any such condition.”.
- (5) In section 25(4) (legal aid in appeals), after “23” insert “, 23A”.
- (6) In section 25AB(4) (legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee or the Privy Council), after “23” insert “, 23A”.
- (7) In section 30(3)(a) (legal aid in contempt proceedings), after “23” insert “, 23A”.

**65 Criminal legal aid: conditions and reviews**

- (1) Section 24 (legal aid in summary proceedings) of the 1986 Act is amended in accordance with subsections (2) to (6) of this section.

- (2) In subsection (1), for “subsection” substitute “subsections (1A), (2) and”.
- (3) After subsection (1) insert—
- “(1A) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.
- (4) In subsection (2), after “that” insert “—
- (a) after consideration of the financial circumstances of the person, the expenses of the case cannot be met without undue hardship to him or his dependants;
- (b)”.
- (5) After subsection (5) insert—
- “(5A) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (1A) may apply to the Board for a review of any such condition.”.
- (6) In subsection (6)—
- (a) the word “has either” is repealed;
- (b) at the beginning of paragraph (a) insert “has”;
- (c) at the end of paragraph (a) “or” is repealed;
- (d) at the beginning of paragraph (b) insert “has”;
- (e) at the end of paragraph (b) insert “; or
- (c) is no longer receiving criminal legal aid in connection with proceedings because the Board is no longer satisfied as to the matters mentioned in paragraphs (a) and (b) of subsection (1)”.
- (7) Section 25 (legal aid in appeals) of the 1986 Act is amended in accordance with subsections (8) and (9) of this section.
- (8) After subsection (2A) insert—
- “(2B) Where a person is no longer receiving criminal legal aid because the Board is no longer satisfied as mentioned in subsection (2)(c) above the High Court may, at any time prior to the disposal of the appeal, whether or not on application made to it, notwithstanding the Board no longer being so satisfied, determine that it is in the interests of justice that the person should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.
- (2C) Legal aid made available to a person under subsection (2) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.
- (9) After subsection (3) insert—
- “(3A) The Board shall establish a procedure under which any person whose application for criminal legal aid under subsection (2) has been refused may apply to the Board for a review of his application.

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*Status: This is the original version (as it was originally enacted).*

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(3B) The Board shall establish a procedure under which any person receiving criminal legal aid under subsection (2) which is subject to conditions by virtue of subsection (2C) may apply to the Board for a review of any such condition.”.

(10) Section 25AB (legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee of the Privy Council) is amended in accordance with subsections (11) and (12) of this section.

(11) After subsection (2) insert—

“(2A) Legal aid made available to a person under subsection (2) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.

(12) After subsection (3) insert—

“(3A) The Board shall establish a procedure under which any person whose application for criminal legal aid under subsection (2) has been refused may apply to the Board for a review of his application.

(3B) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (2A) may apply to the Board for a review of any such condition.”.

**66 Criminal Legal Assistance Register: removal of name following failure to comply with code**

(1) Section 25D (removal of name from Register following failure to comply with code) of the 1986 Act is amended as follows.

(2) In subsection (1), after “be” insert “, or may not have been,”.

(3) After subsection (4), insert—

“(4A) Where, after carrying out the procedures mentioned in subsection (1) above and, where a time limit has been set under subsection (3) above, after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code—

- (a) the firm have not complied with the code in a material regard, it may remove the names of the firm and, subject to subsection (5) below, of any registered solicitors connected with the firm from the Register;
- (b) the solicitor has not complied with the code in a material regard, it may remove his name from the Register.”.

(4) In subsection (5), after “(4)(a)” insert “or (4A)(a)”.

(5) In subsection (8), after “(4)” insert “or (4A)”.

**67 Register of advice organisations: advice and assistance**

(1) The 1986 Act is amended as follows.

(2) In section 4(2)(a) (Scottish Legal Aid Fund), after “counsel” insert “or registered organisation”.

- (3) In section 6 (definitions)—
- (a) in subsection (1)—
    - (i) in the definition of “advice and assistance” after paragraph (a) insert—
      - “(aa) oral or written advice provided by an adviser—
        - (i) on the application of Scots law to any specified categories of circumstances which have arisen in relation to the person seeking advice;
        - (ii) as to any steps which that person might appropriately take having regard to the application of Scots law to those circumstances;”;
    - (ii) in that definition, after paragraph (b) insert—
      - “(c) assistance provided to a person by an adviser in taking any steps mentioned in paragraph (aa)(ii) above, by taking such steps on his behalf or by assisting him in so taking them;”;
    - (iii) in the definition of “assistance by way of representation”, after the word “means” insert “, subject to section 12B(3) of this Act,”;
  - (b) in subsection (2), before the definition of “client” insert—
    - ““adviser” means a person who is approved by a registered organisation for the purposes of providing advice and assistance on behalf of the organisation and who is the person by whom advice and assistance is provided;”.
- (4) In section 10 (financial limit)—
- (a) in subsection (1)—
    - (i) after the word “solicitor” where it first occurs insert “or, as the case may be, adviser”;
    - (ii) in paragraph (a), after the word “solicitor” insert “or adviser”;
  - (b) in subsection (3)—
    - (i) after paragraph (a) insert—
      - “(aa) any outlays which may be incurred by the registered organisation (which approved the adviser) in, or in connection with, the providing of the advice and assistance;”;
    - (ii) after paragraph (b) insert—
      - “(ba) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the registered organisation (which approved the adviser) in respect of the advice and assistance;”.
- (5) In section 12 (payments of fees or outlays otherwise than through clients' contributions)—
- (a) in subsection (3), after the word “solicitor” where it first occurs insert “or, as the case may be, the registered organisation,”;

- (b) in paragraph (d) of that subsection, after “solicitor” insert “or the registered organisation”.
- (6) After section 12, insert—

*“Register of advice organisations*

**12A Register of advice organisations**

- (1) The Board shall establish and maintain a register of advice organisations (“the register of advice organisations”) of organisations approved by the Board as registered organisations in relation to the provision of advice and assistance by persons approved by such organisations as advisers.
- (2) A person who—
- (a) is a solicitor;
  - (b) is an advocate;
  - (c) is a conveyancing practitioner or an executry practitioner, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);
  - (d) has acquired any right to conduct litigation or right of audience by virtue of section 27 of that Act,
- may not be an adviser.
- (3) Schedule 1A makes further provision about advisers and registered organisations, the register of advice organisations, code of practice for advisers etc.

**12B Advice and assistance**

- (1) The Scottish Ministers may by regulations specify categories of circumstances for the purposes of paragraph (aa) of the definition of “advice and assistance” in section 6(1) of this Act.
- (2) The power under subsection (1) may specify different categories for different purposes.
- (3) In this Act—
- (a) “advice and assistance” as defined in section 6(1)(c) is limited to the extent to which it is competent for the adviser to perform any steps on behalf of the person or by assisting him in so taking them;
  - (b) “assistance by way of representation” as defined in section 6(1) includes advice and assistance provided by an adviser but only to the extent to which it is competent for the adviser to perform such steps referred to in that definition.”.
- (7) In section 33 (fees and outlays of solicitors and counsel)—
- (a) after subsection (1) insert—
- “(1A) A registered organisation shall be paid out of the Fund in accordance with section 4(2)(a) of this Act in respect of any fees or outlays properly incurred by it in respect of the advisers it approves providing advice and assistance under this Act.”;



- (b) in subsection (2), after “counsel” insert “and, in respect of advice and assistance as mentioned in paragraph (b) of this subsection, advisers”.
- (8) In section 41 (interpretation)—
- (a) after the definition of “advice and assistance” insert—
    - ““adviser” has the meaning given to it in section 6(2) of this Act;
    - “adviser code” means the code of practice in relation to the register of advice organisations for the time being in force under Schedule 1A to this Act;”;
  - (b) after the definition of “the Register” insert—
    - ““the register of advice organisations” means the register established and maintained under section 12A of this Act;”;
  - (c) after the definition of “registered firm” insert—
    - ““registered organisation” means an organisation whose name appears on the register of advice organisations;”.
- (9) After Schedule 1 (Scottish Legal Aid Board) to the 1986 Act, insert—

#### “SCHEDULE 1A

*(introduced by section 12A(3))*

#### FURTHER PROVISION IN RELATION TO THE REGISTER OF ADVICE ORGANISATIONS

##### **Register of advice organisations**

- 1
- (1) An organisation which satisfies the Board that it complies with the relevant provisions of the adviser code shall be approved by the Board as an organisation that may approve a person to provide advice and assistance on behalf of the organisation; and the Board shall make an appropriate entry on the register of advice organisations.
  - (2) An individual may apply for entry on the register of advice organisations as an organisation; and if the Board is satisfied that the individual complies with the relevant provisions of the adviser code in relation to an organisation, the Board shall approve the individual and treat the individual as an organisation for the purposes of this Schedule.
  - (3) The Board must make the register of advice organisations available for public inspection, without charge, at all reasonable times.
  - (4) In this Schedule an “organisation” includes—
    - (a) a firm of solicitors;
    - (b) an incorporated practice within the meaning of section 34(1A)(c) of the Solicitors (Scotland) Act 1980 (c. 46).

### **Applications**

- 2 (1) An application for entry on the register of advice organisations shall be made in such form as the Board may determine, and shall be accompanied by such documents as the Board may specify.
- (2) On receipt of an application the Board shall make such enquiries as it thinks appropriate for the purposes of determining whether the applicant complies with the relevant provisions of the adviser code.
- (3) The Board may determine an application to be entered on the register of advice organisations by—
  - (a) granting the application; or
  - (b) refusing the application.
- (4) Where the Board decides to refuse an application it shall as soon as practicable thereafter send the applicant, by recorded delivery, a written note of its reasons.

### **Further provision on applications**

- 3 (1) In determining any application for entry on the register of advice organisations, the Board may limit the grant of the application to any of the particular categories of circumstances as specified by virtue of section 12B(1).
- (2) Where the Board limits the grant of an application as mentioned in subparagraph (1), the entry made on the register under paragraph 1(1) must state the categories in relation to which the organisation is registered; and any adviser approved by the organisation may provide advice and assistance under this Act only in relation to those categories.

### **Adviser code**

- 4 (1) The Board shall prepare a code of practice (an “adviser code”) in relation to advisers and registered organisations.
- (2) The adviser code prepared under subparagraph (1) must include—
  - (a) the conditions to be complied with in order to qualify for registration;
  - (b) the types of organisations eligible for registration;
  - (c) the conditions to be complied with in order for a person to be approved by a registered organisation as an adviser;
  - (d) the laying down of standards, conduct, practice and training expected in relation to—
    - (i) the provision of advice and assistance by advisers;
    - (ii) the supervision of such activity by registered organisations;
  - (e) arrangements for dealing with complaints about the activities of advisers and registered organisations;
  - (f) arrangements for monitoring the activities of advisers and registered organisations.

- (3) The adviser code prepared under sub-paragraph (1) has effect on such date as the Board may confirm.
- (4) But the adviser code may not have effect unless and until it has been—
  - (a) approved by the Scottish Ministers; and
  - (b) the Board has laid a copy of the prepared code before the Scottish Parliament.
- (5) The Board is to publish the adviser code in such way as, in its opinion, is likely to bring it to the attention of those interested in it.
- (6) The Board is to—
  - (a) keep the adviser code under review; and
  - (b) revise it where appropriate.
- (7) The provisions of this paragraph apply in relation to any revision of the adviser code as they apply in relation to the version originally prepared.
- (8) Registered organisations shall comply with the relevant requirements of the adviser code.

### **Monitoring**

- 5 The Board is to monitor—
  - (a) the provision of advice and assistance and related activities by advisers;
  - (b) compliance with the adviser code by registered organisations.

### **Removal of name from the register of advice organisations**

- 6 (1) Where it appears to the Board (whether or not following a complaint made to it) that a registered organisation may not be, or may not have been, complying with the adviser code, it shall investigate the matter in such manner as it thinks fit.
- (2) Where the Board conducts an investigation under sub-paragraph (1) it must allow the registered organisation concerned the opportunity to make representations.
- (3) Following an investigation under sub-paragraph (1), the Board may give the registered organisation concerned an opportunity, within such time as it may specify, to remedy any defect in the compliance with the adviser code.
- (4) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that the registered organisation is not complying with the adviser code, it shall remove from the register of advice organisations the name of the organisation.
- (5) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code, the registered

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*Status: This is the original version (as it was originally enacted).*

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organisation has not complied with the code in a material regard, it may remove the name of the organisation from the register of advice organisations.

- (6) Where the Board decides to remove the name of an organisation from the register of advice organisations in accordance with sub-paragraph (4) it shall as soon as practicable thereafter send the organisation, by recorded delivery, a written note of its reasons.

### Appeals

- 7 (1) A decision by the Board to refuse an application under paragraph 2(3)(b) may be appealed by the applicant to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 2(4).
- (2) A decision by the Board under paragraph 6(4) or (5) to remove from the register of advice organisations the name of a registered organisation may be appealed to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 6(6); but the making of an appeal shall not have the effect of restoring the name to the register of advice organisations.
- (3) An appeal under sub-paragraph (1) or (2) may be on questions of both fact and law and the court, after hearing such evidence and representations as it considers appropriate, may make such order as it thinks fit."

## 68 Scottish Legal Aid Board: grants for certain purposes

- (1) The 1986 Act is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund)—
- (a) at the beginning of subsection (2)(a) insert "subject to section 4A(13),";
- (b) after subsection (2)(ab) insert—
- “(ac) such sums as are, by virtue of section 4A, due out of the Fund to any person;”;
- (c) after subsection (3)(ac) insert—
- “(ad) any sums recovered from a person in connection with a grant made by the Board in accordance with section 4A;”.
- (3) After that section insert—

### “4A Power of Board to make grants for certain purposes

- (1) The Board may, on an application made to it by any person, make grants of such amount and subject to such conditions (including conditions as to repayment) as it may determine to the person in respect of—
- (a) any of the matters mentioned in subsection (2);
- (b) any of the purposes mentioned in subsection (3).
- (2) The matters are—
- (a) any civil legal aid or advice and assistance in relation to civil matters provided, or to be provided, by any solicitor or counsel;

- (b) any advice and assistance in relation to civil matters provided, or to be provided, by any adviser;
  - (c) any advice, assistance or representation (not falling within paragraphs (a) or (b)) provided, or to be provided, by any person, which is connected to civil matters.
- (3) The purposes are facilitating, supporting and developing the provision of any of the matters referred to in subsection (2).
- (4) The Scottish Ministers must specify a limit to the total amount that may be paid out of the Fund by virtue of subsection (1).
- (5) In specifying any limit under subsection (4) the Scottish Ministers must specify the period in relation to which that limit applies.
- (6) Any grant made under subsection (1) must be made in accordance with an approved plan.
- (7) The Board must prepare and publish a plan as to the criteria which the Board will apply in considering whether or not to make such a grant; and the Board must submit the plan to the Scottish Ministers for approval.
- (8) The Scottish Ministers may approve a plan submitted to them under subsection (7) with or without modification.
- (9) The Scottish Ministers may at any time—
  - (a) approve a modification of an approved plan proposed by the Board or withdraw approval of such a plan or modification;
  - (b) require the Board to prepare and publish a plan under subsection (7).
- (10) An application under subsection (1) must include such information as the Board may reasonably require.
- (11) In preparing and publishing the plan under subsection (7) the Board must do so in accordance with such directions as the Scottish Ministers may give.
- (12) Any money due to a person by virtue of this section shall be paid to the person by the Board out of the Fund.
- (13) Any money paid to a person under subsection (1) as provided in subsection (12), in respect of—
  - (a) any civil legal aid or advice and assistance provided by any solicitor or counsel;
  - (b) any advice and assistance provided by an adviser,shall be taken to be a payment in accordance with this Act; and no other payment may be made out of the Fund in respect of that civil legal aid or, as the case may be, advice and assistance.
- (14) In this section, “approved plan” means a plan approved, for the time being, by the Scottish Ministers under subsection (8); and includes any part or modification of the plan so approved.
- (15) For the purposes of this section, “person” includes a body corporate or unincorporate.”.

**69 Financial limit: advice and assistance**

- (1) Section 10 (financial limit) of the 1986 Act is amended as follows.
- (2) In subsection (1)(b)—
- (a) after “except” insert “, subject to subsection (4),”;
  - (b) at the end insert “or in the circumstances set out in subsection (1A)”.
- (3) After subsection (1) insert—
- “(1A) The circumstances are that—
- (a) the advice and assistance requires to be given urgently; and
  - (b) it is not possible to seek the approval of the Board before the advice and assistance requires to be given,
- and following which an application may be made under subsection (1B) for the Board’s approval.
- (1B) If the Board is satisfied that the circumstances set out in subsection (1A) were present it may, on application by the solicitor or adviser concerned, give its approval to the limit having been exceeded.”.
- (4) After subsection (3) insert—
- “(4) In the circumstances set out in subsection (5), no application may be made for the Board’s approval for the cost of giving the advice and assistance—
- (a) to exceed the limit applicable under this section; or
  - (b) to that limit having been exceeded.
- (5) The circumstances are that the matter with which the advice and assistance is concerned is not—
- (a) specified as a distinct matter for the purposes of advice and assistance by virtue of regulations made under this Act; or
  - (b) being treated as if it were a distinct matter by virtue of such regulations.”.

**70 Further provision in relation to the Fund: advice and assistance**

- (1) In section 4 of the 1986 Act (Scottish Legal Aid Fund) in subsection (2), after paragraph (b) insert—
- “(ba) any sums as are, by virtue of section 12C of this Act, due out of the Fund;”.
- (2) After section 12B of that Act (inserted by section 67 of this Act) insert—

*“Advice and assistance: further provision in relation to the Fund*

**12C Further provision in relation to the Fund: advice and assistance**

- (1) This section applies where, in respect of any matter in connection with which advice and assistance has been provided, the sums mentioned in section 4(3) (aa), (ca) and (cb) which are payable into the Fund have been so paid.

- (2) There shall be paid out of the Fund any sum which, in the opinion of the Board the party concerned would have been likely to receive, after the operation of section 12(3), if the advice and assistance provided had not been provided—
  - (a) by virtue of a grant made under section 4A; or
  - (b) by a solicitor in the course of employment to which Part V of this Act applies.”.

## **71 Availability of civil legal aid for defamation or verbal injury**

- (1) The 1986 Act is amended as follows.
- (2) In section 14 (availability of civil legal aid), after subsection (1B) insert—
  - “(1C) In the case of proceedings described in paragraph 1 of Part II of Schedule 2 to this Act, civil legal aid shall be available to a person only if, in addition to the requirements which have to be met under subsection (1) and section 15 of this Act and subject to paragraph 2 of Part II of Schedule 2, such criteria as may be set out by the Scottish Ministers in directions given to the Board are met.
  - (1D) A direction given under subsection (1C) may—
    - (a) include criteria in respect of which the Board may require to satisfy itself;
    - (b) make different provision for different purposes;
    - (c) be varied or revoked at any time.
  - (1E) Where the Scottish Ministers give a direction under subsection (1C)—
    - (a) the Board must comply with it;
    - (b) the Scottish Ministers must arrange for the direction to be published in such manner as they consider appropriate.”.
- (3) In Part II of Schedule 2 (excepted proceedings)—
  - (a) in paragraph 1, after “to” insert “section 14(1C) and”;
  - (b) in paragraph 2, the words “, and legal” to the end are repealed.

## **72 Civil legal aid: conditions and reviews**

- (1) Section 14 (availability of civil legal aid) of the 1986 Act is amended in accordance with subsections (2) and (3) of this section.
- (2) In subsection (1), for “subsection” substitute “subsections (1F) and”.
- (3) After subsection (1E) (inserted by section 71(2) of this Act), insert—
  - “(1F) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.
  - (1G) The Board shall establish a procedure under which any person receiving civil legal aid under this section which is subject to conditions by virtue of subsection (1F) may apply to the Board for a review of any such condition.”.
- (4) Section 29 (legal aid in certain proceedings relating to children) of the 1986 Act is amended in accordance with subsections (5) and (6) of this section.

(5) After subsection (5) insert—

“(5A) Legal aid made available to a person under subsection (2)(d) above or subsection (9) below may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.

(6) After subsection (6) insert—

“(6A) The Board shall establish a procedure under which any person whose application for legal aid under subsection (2)(d) above or subsection (9) below has been refused may apply to the Board for a review of his application.

(6B) The Board shall establish a procedure under which any person receiving legal aid under subsection (2)(d) above or subsection (9) below which is subject to conditions by virtue of subsection (5A) may apply to the Board for a review of any such condition.”.

### **73 Availability of legal aid: Judicial Committee of the Privy Council**

(1) In section 25AB (legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee of the Privy Council) of the 1986 Act—

- (a) in subsection (1), for “or 13(a)” substitute “, 13(a) or 33”;
- (b) in subsection (4), after “11” insert “or 33”.

(2) In paragraph 1 of Part 1 of Schedule 2 to that Act, for “and 13(b)” substitute “, 13(b), 32 and 33”.

### **74 Solicitors employed by the Scottish Legal Aid Board**

(1) In section 4 (Scottish Legal Aid Fund) of the 1986 Act, after subsection (2)(a) insert—

“(aza) any expenses incurred by the Board in connection with the provision by solicitors employed by it by virtue of section 27(1) of this Act of—

- (i) advice and assistance in relation to civil matters;
- (ii) civil legal aid;
- (iii) any services as are mentioned in section 26(2) of this Act;”.

(2) In section 26 (employment to which Part V applies)—

- (a) in subsection (2)—
  - (i) the word “local” is repealed;
  - (ii) in paragraph (a), for “its function” substitute “any function it has”;
- (b) in subsection (3)(a)—
  - (i) the word “local” is repealed;
  - (ii) after “concerned” insert “(whether wholly or partly)”.

(3) In section 27 (arrangements for employment to which Part V applies) of that Act—

- (a) after subsection (1), insert—
 

“(1A) The provisions of paragraph 8 of Schedule 1 to this Act shall apply to solicitors employed by the Board by virtue of subsection (1) as they apply to employees appointed by the Board under that paragraph.”;
- (b) subsections (2) and (3) are repealed.



## 75 Contributions, and payments out of property recovered

- (1) The 1986 Act is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund) in subsection (2), after paragraph (ab) insert—
  - “(aba) any sums repayable to a person in accordance with section 17(2C) of this Act;
  - (abb) any sums payable to a person in accordance with section 17(2D) of this Act;”.
- (3) In that section, after subsection (3)(c) insert—
  - “(ca) any sum recovered as to expenses under an award of a court or an agreement or otherwise in favour of any person in respect of any matter in connection with which advice and assistance has been provided to the person—
    - (i) by virtue of a grant made under section 4A; or
    - (ii) by a solicitor in the course of employment to which Part V of this Act applies;
  - (cb) any sum which is to be paid out of property (of whatever nature and wherever situated) recovered or preserved for any person in respect of any matter in connection with which advice and assistance has been provided to the person (including his rights under any settlement arrived at in connection with that matter in order to avoid or bring to an end any proceedings)—
    - (i) by virtue of a grant made under section 4A; or
    - (ii) by a solicitor in the course of employment to which Part V of this Act applies;”.
- (4) In section 17 (contributions, and payments out of property recovered), after subsection (2B) insert—
  - “(2C) If the total contribution to the Fund made by a person in respect of any proceedings exceeds the net liability of the Fund on the person’s account, the excess shall be repaid to the person.
  - (2D) Any sums paid to the Board under subsection (2B) which are no longer required to meet the net liability of the Fund on a person’s account, having taken into account any relevant sums paid to the Board under subsection (2A), shall be paid to the person.
  - (2E) Nothing in subsection (2B) shall prejudice the power of the court to allow any damages or expenses to be set off.
  - (2F) In this section, the reference to a “net liability of the Fund” on a legally assisted person’s account is a reference to the aggregate amount of—
    - (a) the sums paid or payable to a solicitor or counsel out of the Fund on the person’s account, in respect of the proceedings in question; and
    - (b) any sums paid or payable to a solicitor, counsel or registered organisation (in respect of the advisers it approves) out of the Fund on the person’s account, for advice and assistance in connection with the proceedings in question or any matter to which those proceedings relate,

being sums not recouped by the Fund out of expenses in respect of those proceedings, or as a result of any right which the person may have to be indemnified against such expenses.

(2G) Where the solicitor for a legally assisted person is employed by the Board for the purposes of Part V of this Act, references in subsection (2F) to sums payable out of the Fund include references to sums which would have been so payable had the legal aid and, as the case may be, advice and assistance been provided in circumstances other than those specified in subsection (2I).

(2H) Where—

- (a) civil legal aid is or has been provided in respect of the proceedings in question by virtue of a grant made under section 4A; and
- (b) advice and assistance is or has been provided in connection with the proceedings by virtue of a grant made under section 4A,

references in subsection (2F) to sums payable out of the Fund include references to sums which would have been so payable had the legal aid and, as the case may be, advice and assistance been provided in circumstances other than those specified in subsection (2I).

(2I) The circumstances are that the legal aid and, as the case may be, advice and assistance has been provided—

- (a) by virtue of a grant made under section 4A; or
- (b) by a solicitor in the course of employment to which Part V of this Act applies.”.

## 76 Regulations under section 36 of the 1986 Act

(1) Section 36 (regulations) of the 1986 Act is amended as follows.

(2) After paragraph (c) of subsection (2) insert—

“(ca) make provision allowing the Board to determine—

- (i) the matters which, subject to subsection (2A), are or are not to be treated as distinct matters for the purposes of advice and assistance;
- (ii) on a case by case basis, matters which may be treated as if they were distinct matters for the purposes of advice and assistance;”.

(3) After subsection (2) insert—

“(2A) Regulations made under this section which include provision as mentioned in subsection (2)(ca)(i) must include provision to the effect that—

- (a) any determination by the Board as to the matters which are or are not to be so treated as distinct matters may only be made after consultation with the Law Society;
- (b) where a matter has been determined by the Board to be so treated as a distinct matter, the Board may not determine that the matter is no longer to be so treated unless the Scottish Ministers consent.”.

## PART 5

### GENERAL

#### 77 Advice, services or activities to which Act does not apply

- (1) Nothing in this Act applies to—
  - (a) any element of a complaint relating to;
  - (b) the provision by a practitioner of,the advice, services or activities mentioned in subsection (2).
- (2) The advice, services or activities are—
  - (a) activities carried out by virtue of a group licence issued under section 22(1) (b) of the Consumer Credit Act 1974 (c. 39);
  - (b) activities of an insolvency practitioner within the meaning of Part 13 of the Insolvency Act 1986 (c. 45);
  - (c) activities mentioned in paragraph (a) of paragraph 5(1) of Schedule 3 to the Financial Services Act 1986 (c. 60);
  - (d) immigration advice or immigration services, both within the meaning of section 82(1) of the Immigration and Asylum Act 1999 (c. 33);
  - (e) regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000 (c. 8), other than activity falling within paragraph (f) below, in respect of which the Financial Services Authority has by virtue of Part 20 of that Act arranged for its regulatory role to be carried out by the Law Society of Scotland;
  - (f) exempt regulated activities within the meaning of section 325(2) of the Financial Services and Markets Act 2000 (c. 8).
- (3) In subsection (1), “complaint” and “practitioner” have the same meanings as in section 46.

#### 78 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.
- (2) An order under this section may—
  - (a) make different provision for different purposes;
  - (b) modify any enactment, instrument or document.

#### 79 Regulations or orders

- (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—
  - (a) must be exercised by statutory instrument;
  - (b) may be exercised so as to make different provision for different purposes.

- (2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 26(1) or 82(2)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.
- (3) A statutory instrument containing—
- (a) an order under section 10(7) or 24(8);
  - (b) regulations under section 41(1);
  - (c) an order under—
    - (i) section 78(1) containing provisions which add to, replace or omit any part of the text of an Act;
    - (ii) paragraph 2(7) of schedule 1,
- is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

## **80 Interpretation**

In this Act—

“the 1980 Act” means the Solicitors (Scotland) Act 1980 (c. 46);

“the 1986 Act” means the Legal Aid (Scotland) Act 1986 (c. 47);

“the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

## **81 Minor and consequential modifications**

Schedule 5 makes—

- (a) minor modifications;
- (b) modifications consequential on the provisions of this Act.

## **82 Short title and commencement**

- (1) This Act may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007.
- (2) The provisions of this Act, except this section and sections 46, 79 and 80 come into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be appointed under subsection (2) for different purposes.