
Status: This is the original version (as it was originally enacted).

SCHEDULE 1

(introduced by section 1(2))

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Status

- 1 (1) The Commission is a body corporate.
- (2) The Commission is not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

Membership of the Commission

- 2 (1) The Commission is to consist of the following members—
 - (a) a person to chair the Commission (“the chairing member”); and
 - (b) 8 other members.
- (2) Members are appointed by the Scottish Ministers, having consulted the Lord President of the Court of Session (“the Lord President”).
- (3) The chairing member and 4 other members of the Commission must be members (in this schedule referred to as “non-lawyer members”) who are not within any of the categories mentioned in sub-paragraph (6).
- (4) There must be 4 members of the Commission (in this schedule referred to as “lawyer members”) who are within any of the categories mentioned in sub-paragraph (6).
- (5) Of the lawyer members 3 must have practised within any, or any combination, of the categories mentioned in sub-paragraph (6) for at least 10 years.
- (6) The categories are—
 - (a) solicitors;
 - (b) advocates;
 - (c) conveyancing practitioners or executry practitioners;
 - (d) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.
- (7) The Scottish Ministers may, subject to sub-paragraphs (8) and (9), by order amend—
 - (a) sub-paragraph (1)(b) to alter the number of other members referred to there;
 - (b) sub-paragraph (3) to alter the number of other members referred to there;
 - (c) sub-paragraph (4) to alter the number of members referred to there;
 - (d) sub-paragraph (5) to alter the number of lawyer members referred to there.
- (8) The number of non-lawyer members must be greater than the number of lawyer members.
- (9) The number of—
 - (a) non-lawyer members must be no fewer than 4 and no greater than 8;
 - (b) lawyer members must be no fewer than 3 and no greater than 7.

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Terms of appointment etc.

- 3 (1) Subject to sub-paragraph (2), each member is to be appointed for a period of 5 years.
- (2) Appointments that constitute the Commission for the first time are to be in accordance with sub-paragraph (3).
- (3) Each member is to be appointed for a period of not less than 4 years and not exceeding 6 years.
- (4) A member—
- (a) may by giving notice in writing to the Scottish Ministers resign office as a member of the Commission;
 - (b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.
- (5) A person is, on ceasing to be a member, eligible for reappointment for a single further period; but not before a period of 3 years has elapsed.
- 4 In appointing members, the Scottish Ministers are to have regard to the desirability of including—
- (a) persons who have experience of, and have shown capacity in—
 - (i) consumer affairs or complaints handling;
 - (ii) the provision of advice to members of the public on or in relation to such matters;
 - (b) persons who have experience of, and shown capacity in, the practice and provision of legal education and training;
 - (c) persons who have experience of, and shown capacity in—
 - (i) civil or criminal proceedings;
 - (ii) court procedures and practice generally;
 - (iii) the practice and provision of other legal services;
 - (iv) the monitoring of legal services;
 - (d) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Commission's functions.

Removal of members

- 5 (1) Subject to sub-paragraph (2), the chairing member may, by written notice, remove a member from office if the chairing member is satisfied as regards any of the following matters—
- (a) that the member becomes insolvent;
 - (b) that the member—
 - (i) has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission;
 - (ii) has been convicted of a criminal offence;
 - (iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.
- (2) The chairing member may not remove a member from office without the agreement of the Lord President of the Court of Session.

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- (3) The Lord President may, by written notice, remove the chairing member from office if the Lord President is satisfied as regards any of the matters mentioned in sub-paragraph (1)(a) or (b).
- (4) For the purpose of sub-paragraph (1)(a) a member becomes insolvent on—
 - (a) the approval of a voluntary arrangement proposed by the member;
 - (b) being adjudged bankrupt;
 - (c) the member's estate being sequestered;
 - (d) entering into a debt arrangement programme under Part 1 of the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#) as the debtor;
 - (e) granting a trust deed for creditors.

Disqualification from membership

- 6 (1) A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—
 - (a) a member of the House of Commons;
 - (b) a member of the Scottish Parliament;
 - (c) a member of the European Parliament.
- (2) A person who has held any of the offices set out in sub-paragraph (1)(a) to (c) is also disqualified from appointment as a member of the Commission for a period of one year starting from the day on which the person last held any of those offices.

Remuneration, allowances and pensions for members

- 7 (1) The Commission is to pay to its members such remuneration as the Scottish Ministers may in each case determine.
- (2) The Commission is to pay to its members such allowances as the Scottish Ministers may in each case determine.
- (3) The Commission may, with the approval of the Scottish Ministers—
 - (a) pay or make arrangements for the payment;
 - (b) make payments towards the provision;
 - (c) provide and maintain schemes (whether contributory or not) for the payment, of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a member of the Commission, as the Commission may determine.
- (4) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

Chief executive and other employees

- 8 (1) The Commission is to employ a chief executive.
- (2) The chief executive is, with the approval of the Scottish Ministers, to be appointed by the Commission on such terms and conditions as the Commission may, with such approval, determine.

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- (3) The Commission may (subject to any directions given under sub-paragraph (4)) appoint such other employees on such terms and conditions as the Commission may determine.
- (4) The Scottish Ministers may give directions to the Commission as regards the appointment of employees under sub-paragraph (3) (including the number of appointments) and as regards terms and conditions of their employment.
- (5) The Commission must comply with directions given to it under sub-paragraph (4).
- (6) The Commission may, with the approval of the Scottish Ministers—
 - (a) pay or make arrangements for the payment;
 - (b) make payments towards the provision;
 - (c) provide and maintain schemes (whether contributory or not) for the payment, of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as the Commission may determine.
- (7) The reference in sub-paragraph (6) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

Accountable officer

- 9 (1) The chief executive is the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
 - (a) signing the accounts of the expenditure and receipts of the Commission;
 - (b) ensuring the propriety and regularity of the finances of the Commission;
 - (c) ensuring that the resources of the Commission are used economically, efficiently and effectively;
 - (d) the duty mentioned in sub-paragraph (3).
- (3) The duty is, where the accountable officer is required by the Commission to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—
 - (a) obtain written authority from the Commission before taking the action;
 - (b) send a copy of the authority as soon as possible to the Auditor General for Scotland.

Procedure

- 10 (1) Subject to sub-paragraph (2)—
 - (a) any quorum of the Commission as contained in rules made under section 32(1) must consist of a greater number of non-lawyer members than lawyer members;
 - (b) the chairing member must, if present, chair meetings of the Commission or any committee of the Commission;
 - (c) if the chairing member is not available to be present at a meeting of the Commission or any committee of the Commission, the chairing member is to appoint another non-lawyer member to chair the meeting or committee;

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- (d) the chairing member has a casting vote; and any person appointed by that member under sub-sub-paragraph (c) has a casting vote for the purposes of that appointment;
- (e) the validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.

(2) Sub-paragraph (1) does not apply to a determination committee established under paragraph 11(1)(a).

Committees

11 (1) The Commission—

- (a) must establish one or more determination committees in accordance with rules made under section 32(1) for the purpose of exercising any functions mentioned in paragraph 13(2) which a determination committee is authorised by the Commission to exercise;
- (b) may establish other committees for any other purposes relating to its functions.

(2) Subject to sub-paragraph (3)—

- (a) the Commission is to determine the composition of its committees;
- (b) any quorum of a committee as contained in rules made by virtue of section 32 must consist of a greater number of non-lawyer members than lawyer members;
- (c) a committee of the Commission is to comply with any directions given to it by the Commission.

(3) Sub-paragraph (2) does not apply to a determination committee established under sub-paragraph (1)(a).

General powers

12 (1) The Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, or appears to it to be conducive to, the exercise of the Commission's functions.

(2) In particular the Commission may—

- (a) enter into contracts;
- (b) with the consent of the Scottish Ministers, borrow money;
- (c) with the consent of the Scottish Ministers, acquire and dispose of land;
- (d) obtain advice or assistance from any person who, in the Commission's opinion, is qualified to give it.

(3) The Commission may pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the Commission may, with the approval of the Scottish Ministers, determine.

Delegation of functions

13 (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—

- (a) the chief executive;

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- (b) any of its committees;
 - (c) any of its members;
 - (d) any of its other members of staff,
- to exercise such of its functions (to such extent) as it may determine.
- (2) The Commission may authorise—
- (a) the function of deciding under section 2(4)(a) whether a complaint is frivolous, vexatious or totally without merit to be exercised only by any of its committees or by one of the Commission’s members;
 - (b) the function of deciding under section 3(1) whether—
 - (i) any element of a complaint is capable of being dealt with under a specified regulatory scheme;
 - (ii) the extent (if any) to which the Commission is able to take the preliminary steps referred to in section 2(4) in relation to the complaint and to deal with it under Part 1,
 to be exercised only by one of the Commission’s members;
 - (c) the function of deciding whether any element of a complaint is about the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths to be exercised only by one of the Commission’s members;
 - (d) the following functions to be exercised only by a determination committee—
 - (i) the making of a determination under section 9(1);
 - (ii) the making of a determination or direction under section 10(2);
 - (iii) the making of any decision or the publication of a report under section 13;
 - (iv) the making of a decision under section 23(2);
 - (v) the making of a direction under section 24(6).
- (3) The Commission may not authorise the exercise of any of the following functions under sub-paragraph (1)—
- (a) the approval of annual reports and accounts;
 - (b) making of rules under section 32(1);
 - (c) determining the amount of the annual general levy and the complaints levy under section 29(1);
 - (d) the approval of any budget or other financial plan.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.

Location of office

- 14 (1) Subject to sub-paragraph (2), the Commission’s determination of the location of the Commission’s office premises is subject to the approval of the Scottish Ministers.
- (2) The Scottish Ministers may direct the Commission as to the location of the Commission’s office premises; and the Commission must comply with any such direction.

Accounts

- 15 (1) The Commission must—

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- (a) keep proper accounts and accounting records;
 - (b) prepare in respect of each financial year a statement of accounts; and
 - (c) send the statement of accounts to the Scottish Ministers,
- in accordance with such directions as the Scottish Ministers may give.
- (2) The Scottish Ministers must as soon as practicable—
 - (a) send the statement of accounts to the Auditor General for Scotland for auditing;
 - (b) lay the audited statement before the Parliament.
 - (3) If requested by any person, the Commission is to make available at any reasonable time, without charge, in printed or electronic form, their audited accounts, so that they may be inspected by that person.

Reports

- 16 (1) As soon as practicable after the end of each financial year, the Commission must prepare a report on—
 - (a) the discharge of the Commission’s functions during that year; and
 - (b) such action the Commission proposes to take in the following year in pursuance of its functions.
- (2) The Commission must—
 - (a) send a copy of the report to the Scottish Ministers; and
 - (b) publish the report.
- (3) In preparing and publishing the report the Commission must do so in accordance with such directions as the Scottish Ministers may give.
- (4) The Scottish Ministers must as soon as practicable lay a copy of the report before the Parliament.
- (5) The Commission may publish such other reports on matters relevant to the functions of the Commission as it considers appropriate.

SCHEDULE 2

(introduced by sections 17(7) and 37(4))

FURTHER POWERS OF COMMISSION UNDER SECTION 17 OR 37

- 1 Where the Commission—
 - (a) gives notice under subsection (1) of section 17 to any person having possession or control of any documents mentioned in subsection (3) of that section;
 - (b) gives notice under section 17(4) to any person having possession or control of any documents mentioned in subsection (6) of that section;
 - (c) requires any person under section 37(1) or (3) to provide it with information or documents referred to in that section,and the person refuses or fails to produce or deliver any of the documents or the information within the time specified in the notice or requirement or to cause them to be so produced or delivered, the Commission may apply to the court for an order

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requiring the 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.

2 Where the Commission takes possession of any such documents or information which have or has been produced or delivered to it, it must—

- (a) in the case mentioned in paragraph 1(a) or (c), without delay serve on the practitioner against whom the complaint is made, and any other person to whom the notice was given or requirement made;
- (b) in the case mentioned in paragraph 1(b), without delay serve on the complainer,

a notice giving particulars and the date on which it took possession.

3 Before the expiry of the period of 14 days after service of a notice under paragraph 2 the person on whom the notice has been served may apply to the court for an order directing the Commission to return such 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.

4 If no application is made to the court under paragraph 3, 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 the person.

SCHEDULE 3

(introduced by section 32(2))

RULES AS TO COMMISSION’S PRACTICE AND PROCEDURE

Provision which must be included

1 The rules as to the Commission’s practice and procedure made under section 32(1) must include provision—

- (a) regulating the making to the Commission of complaints under Part 1, including—
 - (i) when a complaint is to be regarded as made for the purposes of the Part;
 - (ii) the eligibility of persons to make such complaints on behalf of other persons (whether living or not);
- (b) requiring the Commission not to—
 - (i) investigate a services complaint by virtue of section 9;
 - (ii) remit a conduct complaint to a relevant professional body under section 6(a) or 15(5)(a);
 - (iii) investigate a handling complaint by virtue of section 23,
 unless the complainer has, for the purposes of Parts 1 and 2 of this Act, waived any right of confidentiality in relation to the matters to which the complaint relates;
- (c) regulating the handling by it of complaints under Part 1;

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- (d) regulating the proposal by the Commission under section 9(2) of a settlement of a complaint and how an accepted settlement is to be constituted;
- (e) requiring the Commission—
 - (i) where it considers it appropriate, to hold a hearing in relation to a complaint being dealt with by it under Part 1;
 - (ii) to decide whether such a hearing should be in public or private;
- (f) as to—
 - (i) the evidence which may be required or admitted;
 - (ii) the extent to which it may be oral or written;
 - (iii) the consequences of a person's failure to produce any information or document which the person has been required to produce;
- (g) as to when reasons are to be given (in circumstances where they are not required by this Act to be given)—
 - (i) for the Commission's determinations, directions, decisions or recommendations under Part 1;
 - (ii) in respect of what matters relating to the determinations, directions, decisions or recommendations;
- (h) as to the membership of a determination committee, including in particular provision requiring—
 - (i) that any such committee has at least 3 members, of which the majority are non-lawyer members of the Commission;
 - (ii) that any such committee is chaired by a lawyer member of the Commission;
 - (iii) where the Commission has under section 9(2) proposed a settlement as respects a complaint and the settlement has not been accepted as mentioned in section 9(4), that the members of the committee determining the complaint under section 9(1) or making a determination or direction under section 10(2), by virtue of paragraph 13(2) of schedule 1, must not have been involved in any aspect of the investigation of the complaint (including deciding under section 2(4)(a) whether the complaint was frivolous, vexatious or totally without merit) or the formulation or making by the Commission of the proposed settlement;
- (i) requiring, where the Commission itself (and not one of its determination committees) determines a complaint under section 9(1) or makes a determination or direction under section 10(2) in relation to a complaint, that any member of the Commission involved in doing so must not have been involved in any aspect of the investigation of the complaint (including any matter referred to in paragraph 13(2)(a) to (c) of schedule 1) or the formulation or making by the Commission under section 9(2) of a proposed settlement as respects the complaint;
- (j) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) on any amount of the annual general levy due to be paid to the Commission by a relevant professional organisation under section 27(2)(b) from the date the amount is due under the rules until it is paid;
- (k) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) on any amount of the complaints levy due to the Commission from the date the amount is due under the rules until it is paid;

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- (l) subject to schedule 1, regulating its own meetings (including any quorum) and that of its committees.

Provision which may in particular be included

2 The rules as to the Commission’s practice and procedure made under section 32(1) may in particular include provision—

- (a) fixing time limits for the making of complaints against practitioners or relevant professional organisations or the stages of its investigation under Part 1;
- (b) as to—
- (i) extension of any time limit fixed by it under the rules;
 - (ii) the circumstances in which such extension may be made;
- (c) as to the circumstances in which the Commission is not prevented by section 4(2) from taking the steps and further action referred to in that section in relation to a complaint which is made prematurely (within the meaning of section 4(4));
- (d) as to the circumstances in which the Commission may rely on—
- (i) with the agreement of the body concerned, findings in fact of a relevant professional organisation, the Scottish Solicitors’ Discipline Tribunal or such other body as the Scottish Ministers may by order specify which has disciplinary functions;
 - (ii) previous findings in fact of the Commission;
- (e) securing that a procedural defect in relation to—
- (i) the making of;
 - (ii) the Commission dealing with,
- a complaint under Part 1 is not to have an effect under the Part where the Commission considers that appropriate in the interests of fairness;
- (f) as to the collection of the amount of the annual general levy to be paid to it by the relevant professional organisations and of any complaints levy due to it by practitioners;
- (g) as to the recovery by it from the relevant professional organisations of the annual general levy due to be paid to it by them and from practitioners of any complaints levy due by them;
- (h) as to the circumstances in which the Commission may—
- (i) waive a portion of the annual general levy which would otherwise be payable under section 27(1);
 - (ii) refund any portion of an amount paid under that section;
- (i) as to the circumstances in which the Commission may waive the requirement under section 28(1) to pay the complaints levy in any case;
- (j) as to the calculation of the total amount of the annual general levy each relevant professional organisation is due to collect under section 27(2)(a) in respect of each financial year and notification of each such organisation of the amount so calculated by the Commission.

3 In this schedule—

- “lawyer member” has the meaning given by paragraph 2(4) of schedule 1;
- “non-lawyer member” has the meaning given by paragraph 2(3) of that schedule.

SCHEDULE 4

(introduced by section 48)

FURTHER POWERS OF RELEVANT PROFESSIONAL ORGANISATIONS UNDER SECTION 48

- 1 Where a relevant professional organisation gives notice—
- (a) under section 48(1)(a) to any person having possession or control of any documents mentioned in subsection (3) of that section;
 - (b) under section 48(1)(b) to any person having possession or control of any documents mentioned in subsection (5) of that section,
- and the person refuses or fails to produce or deliver any of the documents within the time specified in the notice or to cause them to be so produced or delivered, the relevant professional organisation may apply to the court for an order requiring the person to produce or deliver the documents or to cause them 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.
- 2 Where a relevant professional organisation takes possession of any such documents which have been produced or delivered to it, it must—
- (a) in the case mentioned in paragraph 1(a), without delay serve on the practitioner against whom the complaint is made, and any other person to whom the notice was given;
 - (b) in the case mentioned in paragraph 1(b), without delay serve on the complainer,
- a notice giving particulars and the date on which it took possession.
- 3 Before the expiry of the period of 14 days after service of a notice under paragraph 2 the person on whom the notice has been served may apply to the court for an order directing the relevant professional organisation to return such documents to the person from whom they were received by the relevant professional organisation 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.
- 4 If no application is made to the court under paragraph 3, or if the court on any such application directs that the documents in question remain in the custody or control of the relevant professional organisation, the relevant professional organisation may make enquiries to ascertain the person to whom they belong and may deal with the documents in accordance with the directions of that person.

SCHEDULE 5

(introduced by section 81)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Solicitors (Scotland) Act 1980 (c. 46)

- 1 (1) The 1980 Act is amended as follows.
- (2) In section 3A(5) (discharge of functions of Council of Law Society)—
- (a) in paragraph (a)—
 - (i) at the beginning, insert “that”;

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- (ii) for the word “, or”, where it first occurs, substitute “;
 - (aa) that under section 47(2) of the 2007 Act of determining what action to propose, or take, as respects a conduct complaint remitted to them under section 6(a) or 15(5)(a) of that Act;
 - (ab) that under—
 - (i) section 42ZA(1) or (2) of this Act or section 20ZB(1) or (2) of the 1990 Act of determining whether or not to uphold a conduct complaint so remitted which suggests unsatisfactory professional conduct;
 - (ii) section 42ZA(3)(b) of this Act or section 20ZB(3)(b) of the 1990 Act of determining what steps to take when upholding such a conduct complaint;
 - (ac) that under section 51(1) of this Act of determining whether or not to make a complaint to the Tribunal as respects a conduct complaint so remitted which suggests professional misconduct;
 - (ad) that”;
 - (iii) the words “the functions” are repealed;
 - (b) in paragraph (b)—
 - (i) before “under” insert “that”;
 - (ii) the words “, the functions” are repealed.
- (3) In section 15(2) (discretion of Council in special cases as respects application for practising certificate)—
- (a) in paragraph (d), after the word “under” insert “section 42ZA(4)(b) or”;
 - (b) in paragraph (i)—
 - (i) the words “, after a complaint has been made” are repealed;
 - (ii) in sub-paragraph (i), for the words “relating to his conduct of the business of a client” substitute “the Council are investigating a conduct complaint remitted to them under section 6(a) or 15(5)(a) of the 2007 Act.”;
 - (iii) in sub-paragraph (ii), at the beginning insert “after a complaint has been made”.
- (4) In section 20(2) (Council’s duty to supply lists of solicitors holding practising certificates), after the words “55(1)(ba)” insert “or (bb)”.
- (5) In section 25A (rights of audience of solicitors in Court of Session etc.), after subsection (14), insert—
- “(14A) Where the Commission makes a determination under section 9(1) of the 2007 Act upholding a services complaint against a solicitor, the Council may, if they consider that the complaint has a bearing on his fitness to exercise any right of audience held by him by virtue of this section and that it is appropriate to do so, suspend or revoke the right.”.
- (6) In section 34 (rules as to professional practice, conduct and discipline)—
- (a) after subsection (4) insert—

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- “(4ZA) If any solicitor fails to comply with any rule made under this section, that failure may be treated as professional misconduct or unsatisfactory professional conduct.”;
- (b) after subsection (4B), insert—
- “(4C) Subsection (4) does not apply to any failure to which subsection (4ZA) applies.
- (4D) Subsection (4ZA) applies to any element of failure which does not involve the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (7) In section 35(3) (failure by solicitor to comply with rule made under section 35 may be treated as professional misconduct for certain purposes), for the words “for the purposes of Part IV” substitute “or as unsatisfactory professional conduct.”.
- (8) In section 37(8) (failure by solicitor to comply with section 37, accountant’s certificates rules etc. may be treated as professional misconduct for certain purposes), for the words “for the purposes of Part IV” substitute “or as unsatisfactory professional conduct.”.
- (9) In section 38 (powers where dishonesty alleged), after subsection (3) insert—
- “(4) This section does not apply to any element of dishonesty other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (10) In section 39 (powers where undue delay alleged), after subsection (2), insert—
- “(3) This section does not apply to any element of undue delay other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (11) In section 39A (powers where excessive fees etc. charged), after subsection (9) insert—
- “(10) The Council shall notify the Commission of any case—
- (a) where any of the following things occur—
- (i) they withdraw a practising certificate under subsection (2);
- (ii) they terminate a suspension from practice and restore a practising certificate under subsection (3);
- (iii) the Court makes an order under subsection (8); and
- (b) which does not involve a complaint remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act.”.
- (12) In section 40 (powers where failure to comply with accounts rules, etc.), after subsection (4), insert—
- “(5) The Council shall notify the Commission of any case—
- (a) where any of the following things occur—
- (i) they withdraw a practising certificate under subsection (1);
- (ii) they terminate a suspension from practice and restore a practising certificate under subsection (2);
- (iii) the Court makes an order under subsection (3); and

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- (b) which does not involve a complaint remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act.”.
- (13) In section 42C (powers to examine documents and demand explanations in connection with complaints)—
- (a) in subsection (3), for the words “documents specified in section 38(2)” substitute “following documents—
 - (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm or, as the case may be, the incorporated practice;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the solicitor is a sole trustee or is a co-trustee only with one or more of his partners or employees or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or of which the practice is a co-trustee only with one or more of its employees.”;
 - (b) in subsection (4), for the words “section 38” in each place where they occur substitute “sections 38, 45 and 46”;
 - (c) after that subsection, insert—

“(5) This section does not apply to any element of professional misconduct other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (14) In section 44(4) (failure to comply with rules made under section may be treated as professional misconduct for certain purposes), for the words from “for” to the end substitute “or unsatisfactory professional conduct.”.
- (15) In section 45 (safeguarding interests of clients of solicitors struck off or suspended)—
- (a) in subsection (1), after “section”, where it first occurs, insert “(except subsection (4A))”;
 - (b) for subsection (3), substitute—

“(3A) If the solicitor or, as the case may be, the incorporated practice fails so to satisfy the Council, the Council may—

 - (a) require the production or delivery to any person appointed by them at a time and place fixed by them of the documents mentioned in subsection (3B);
 - (b) take possession of all such documents; and
 - (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of the solicitor or his firm or, as the case may be, the incorporated practice without the leave of the Court and the Court may make such order.

(3B) The documents are—

 - (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm or, as the case may be, the incorporated practice;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the solicitor is

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- a sole trustee or is a co-trustee only with one or more of his partners or employees or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or of which the practice is a co-trustee only with one or more of its employees.”;
- (c) after subsection (4A) (as inserted by section 60(2)(a) of this Act), insert—
- “(4B) Part II of Schedule 3 has effect in relation to the powers of the Council under subsection (3A).”;
- (d) in subsection (5), the word “and” following the definition of “material date” is repealed.
- (16) In section 46 (safeguarding interests of clients in certain other cases)—
- (a) in each of subsections (2) and (3) for the words from “the provisions of section 38” to the end, substitute—
- “the Council may do any of the things mentioned in subsection (3A)”;
- (b) after subsection (3), insert—
- “(3A) The things are to—
- (a) require the production or delivery to any person appointed by the Council at a time and a place fixed by them of the documents mentioned in subsection (3B);
- (b) take possession of all such documents; and
- (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of the solicitor or his firm without the leave of the Court and the Court may make such order.
- (3B) The documents are—
- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm;
- (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which he is a sole trustee or is a co-trustee only with one or more of his employees.”;
- (c) after subsection (4), insert—
- “(4A) Part II of Schedule 3 has effect in relation to the powers of the Council under subsection (2) or (3).”.
- (17) In section 51 (complaints by Council and public office holders to Tribunal), after subsection (2) insert—
- “(2A) The power in subsection (2) to report to the Tribunal any case where it appears that a solicitor may have been guilty of professional misconduct does not apply to any element of professional misconduct other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (18) In section 52 (procedure on certain complaints and appeals to Tribunal)—
- (a) in the section title, after the word “complaints” insert “and appeals”;
- (b) in subsection (1), after the word “complaint” insert “or appeal”;

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- (c) in subsection (2)—
- (i) in paragraph (aa), after the words “42A(7)” insert “, 42ZA(9), (10), (11) or (12), 42ZD(1)”;
 - (ii) in sub-paragraph (ii) of paragraph (ab), for the words “(11)(b)” substitute “(8A)(b), (11)(b) or (11ZC)”;
 - (iii) after that sub-paragraph insert—
 - “(iii) appeals under section 20ZB(9), (10), (11) or (12) or 20ZE(1) of that Act;”;

- (d) after that subsection, insert—

“(3) Rules made by the Tribunal under subsection (2) for regulating the making, hearing or determining of appeals referred to in paragraph (aa) or (ab)(ii) of that subsection may include provision as to persons being entitled, or required by the Tribunal, to appear or be represented at the appeal.”.

- (19) In section 53 (power of Tribunal to fine for professional misconduct etc.)—

- (a) after subsection (3), insert—

“(3ZA) The Tribunal shall not impose a fine under subsection (2)(c)—

- (a) where the Tribunal is proceeding on the ground referred to in subsection (1)(a) and the solicitor, in relation to the subject matter of the Tribunal’s inquiry, has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years;
- (b) where the Tribunal is proceeding on the ground referred to in subsection (1)(b).”;

- (b) after subsection (7A), insert—

“(7B) A direction of the Tribunal under this section 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.”;

- (c) after subsection (9) (as inserted by section 56(1)(c) of this Act), insert—

“(10) The powers of the Tribunal under paragraph (bb) of subsection (2), and subsection (3ZA), 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.

(11) Subsection (3) does not apply to any element of a decision of the Tribunal to which subsection (3ZA) applies.”.

- (20) In section 53D (suspension etc. of investment business certificates: appeal to Tribunal), for subsection (3) substitute—

“(2A) The solicitor, firm of solicitors or, as the case may be, the incorporated practice may, before the expiry of the period of 21 days beginning with the day on which the decision of the Tribunal under subsection (2) is intimated to him or, as the case may be, it, appeal to the Court against the decision.

(2B) The Council may, before the expiry of the period of 21 days beginning with the day on which the decision of the Tribunal under subsection (2) is intimated to them, appeal to the Court against the decision.

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- (2C) On an appeal under subsection (2A), 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.
- (2D) A decision of the Court under subsection (2C) shall be final.”.
- (21) In section 55 (powers of Court), after subsection (7) (as inserted by section 56(2)(b) of this Act), insert—
- “(8) The power under paragraph (bc) of subsection (1) applies to any element of a decision of the Court which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (22) In section 62A(2) (Council’s power to recover expenses under section 38, 45 or 46), after the words “38” insert “, 45 or 46”.
- (23) In section 65(1) (interpretation)—
- (a) after the definition of “the 1990 Act”, insert—
- ““the 2007 Act” means the [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#),”;
- (b) after the definition of “client account”, insert—
- ““the Commission” means the Scottish Legal Complaints Commission;”.
- (24) In section 65, after subsection (4) insert—
- “(5) In this Act, references to “inadequate professional services” do not include any professional services other than the advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (25) In Schedule 3, Part II (power of Council to investigate), in paragraph 5(1), (2) and (3), after the words “section 38” in each place where they occur insert “, 45 or 46”.
- (26) In Schedule 4 (Constitution, Procedure and Powers of Tribunal)—
- (a) paragraph 8A is repealed;
- (b) in paragraph 15, for the words “and to the complainer” substitute “, the complainer and, as the case may be, the person who made the complaint as respects which the appeal was made to the Tribunal”;
- (c) in paragraph 23—
- (i) after first “section”, insert “42ZA(9), (10), (11) or (12), section 42ZD(1),”;
- (ii) in sub-paragraph (a), after the word “complaint” insert “(except in paragraph 14A)”;
- (iii) sub-paragraph (b) is repealed;
- (iv) in sub-paragraph (c), the words “8A” are repealed;
- (v) after paragraph (c), insert—
- “(ca) in paragraph 11, for the words “complainer and respondent” there shall be substituted “parties to the appeal”;
- (cb) in paragraph 12—

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- (i) for the words “the complainer or the respondent” there shall be substituted “any party to the appeal”;
- (ii) for the word “respondent” where it second appears there shall be substituted “solicitor, the firm of solicitors or, as the case may be, the incorporated practice”;
- (iii) for the words “complainer and to the respondent” there shall be substituted “parties to the appeal”;
- (cc) in paragraph 14A(a), after the word “complaint” there shall be inserted “(as respects which the appeal was made)”;
- (cd) in paragraph 15, for the words “respondent, the complainer and, as the case may be, the person who made the complaint as respects which the appeal was made to the Tribunal” there shall be substituted “parties to the appeal and, if the person who made the complaint as respects which the appeal was made was not a party to the appeal, to that person”;
- (ce) in paragraph 16, after paragraph (e) there shall be inserted—
 - “(ea) under section 42ZD(2); or
 - (eb) under section 53ZB(1), (2), (3) or (4); or”;
- (vi) for paragraph (d), there shall be substituted—
 - “(d) in paragraph 19, for the words from the beginning to “respondent” there shall be substituted “The Tribunal may make such order as it thinks fit as to the payment by any party to the appeal”;
- (d) in paragraph 25, for the words from “person” to first “and” substitute “solicitor, the firm of solicitors or, as the case may be, the incorporated practice, to the person who made the complaint in respect of which the appeal was made and, as the case may be,”.

Legal Aid (Scotland) Act 1986 (c. 47)

- 2 (1) The 1986 Act is amended as follows.
- (2) In section 12 (payment of fees or outlays otherwise than through clients' contributions), subsection (1) is repealed.
 - (3) In section 19(3)(b) (expenses out of the Fund), the word “severe” is repealed.
 - (4) In section 25D(6)(a) (removal of name from Register following failure to comply with code)—
 - (a) at the beginning insert “within such period of time as the Board shall direct (in the case concerned) and”;
 - (b) the word “forthwith,” is repealed.
 - (5) In section 34(2) (confidentiality of information)—
 - (a) after paragraph (a), insert—

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- “(aa) for the purpose of any determination or investigation by the Scottish Legal Complaints Commission under the [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#) (“the 2007 Act”);”;
- (b) in paragraph (b) for “complaint of professional misconduct” substitute “conduct complaint, remitted by the Scottish Legal Complaints Commission under section 6(a) or 15(5)(a) of the 2007 Act”;
- (c) at the end, insert “;
- (f) for the purposes of, or required by virtue of, section 50 of the [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#)”.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)

- 3 (1) The 1990 Act is amended as follows.
- (2) In section 17 (conveyancing practitioners), after subsection (11B) insert—

“(11C) Failure by a practitioner to comply with any rule made under subsection (11) or any rule or regulation referred to in subsection (11B) may be treated as professional misconduct or unsatisfactory professional conduct.”.
 - (3) In section 18 (executry practitioners), after subsection (10B) insert—

“(10C) Failure by a practitioner to comply with any rule made under subsection (10) or any rule or regulation referred to in subsection (10B) may be treated as professional misconduct or unsatisfactory professional conduct.”.
 - (4) In section 20 (professional misconduct, inadequate professional services, etc. by conveyancing or executry practitioners)—
 - (a) in the section title, the words “inadequate professional services,” are repealed;
 - (b) in subsection (1)—
 - (i) for the words “(whether or not following a complaint to them)” substitute “into a conduct complaint remitted to them under section 6(a) or 15(5)(a) of the 2007 Act suggesting professional misconduct by a practitioner or that the circumstances referred to in paragraph (a)(ii) of section 2(1) of the 2007 Act apply as respects a practitioner”;
 - (ii) paragraphs (b) and (c) are repealed;
 - (c) in subsection (2), paragraphs (a), (b) and (f) are repealed;
 - (d) in subsection (2A)(a)—
 - (i) for the word “complaint” substitute “conduct complaint”;
 - (ii) for the words “the Scottish Solicitor’s Discipline Tribunal” substitute “the Tribunal”;
 - (iii) sub-paragraph (ii), and the word “or” following it, are repealed;
 - (e) in subsection (2B)(d), for the word “(f)” substitute “(c)”;
 - (f) in subsection (6)—
 - (i) for the words “(a), (b) or (f)” substitute “(a) or (b)”;
 - (ii) for the words “the Scottish Solicitors’ Discipline Tribunal” substitute “the Tribunal”;

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- (iii) after the words “similar direction,”, insert “or where the Council make a direction under subsection (2)(ca) or the Tribunal make a direction under subsection (2B)(aa),”;
 - (g) in subsection (7), for the words “Court of Session” substitute “court”;
 - (h) in subsection (8), for the words “the Scottish Solicitors' Discipline Tribunal” substitute “the Tribunal”;
 - (i) in subsection (11)—
 - (i) for the word “(f)” substitute “(cb)”;
 - (ii) in paragraph (b), for the words “the Scottish Solicitors' Discipline Tribunal” substitute “the Tribunal”;
 - (j) in subsection (11A)—
 - (i) for the words “Court of Session” substitute “court”;
 - (ii) for the word “Court”, where it second occurs, substitute “court”;
 - (k) after subsection (11E) (as inserted by section 57(2)(d) of this Act), insert—

“(11F) A direction of the Tribunal under this section 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.”;
 - (l) subsections (13), (14) and (15) are repealed;
 - (m) in subsection (16), after the word “subsection” insert “(2)(cb) or”.
- (5) In section 20A (review by Council of decisions), in subsection (2)(a)(iii) for the word “(f)” substitute “(cb)”.
- (6) In section 21 (intervention powers)—
- (a) in the section title, for the word “Board's” substitute “Council's”;
 - (b) in subsection (2)—
 - (i) after paragraph (a), insert “or”;
 - (ii) paragraph (c), and the preceding “or”, are repealed;
 - (c) in each of subsections (5), (6), (7) and (10), for the words “Court of Session” substitute “court”;
 - (d) after subsection (11), insert—

“(11A) Where the Council make a direction under subsection (3) or (4) or apply to the court for an order under subsection (10), the Council shall notify the Commission to that effect and provide it with details of their findings in any inquiry held by virtue of subsection (1) as respects the practitioner concerned.”.
- (7) In section 21A (powers of investigation in relation to conveyancing or executry practitioners)—
- (a) in subsection (1)—
 - (i) for the words “any of the following purposes—” substitute “the purpose of”;
 - (ii) paragraphs (a) and (b), and the word “and” following paragraph (b), are repealed;
 - (iii) in paragraph (c), for the words “the Council”, where it second occurs, substitute “them”;
 - (b) in subsection (2)—

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- (i) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “the Tribunal”;
 - (ii) in paragraph (b), for the words “(11)(b)” substitute “(8A)(b), (11)(b) or (11ZC)”.
- (8) In section 21B (procedures of Tribunal etc. in relation to conveyancing or executry practitioners)—
 - (a) in the section title, for the words “the Scottish Solicitors' Discipline Tribunal” substitute “the Tribunal”;
 - (b) in subsection (1)—
 - (i) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “the Tribunal”;
 - (ii) for paragraph (a), substitute—
 - “(a) in paragraph 9(a)(i) and (b), the words “or, as the case may be, of provision of inadequate professional services” were omitted;”;
 - (c) in subsection (2)—
 - (i) for the words “(11)(b)” substitute “(8A)(b), (11)(b) or (11ZC)”;
 - (ii) after the words “section 20”, insert “, 20ZB(9), (10), (11) or (12) or 20ZE(1);
 - (iii) in paragraph (a), for the word “(b)” substitute “(ca), (cc), (cd)”;
 - (iv) in paragraph (b), after the words “this Act” insert “and as regards paragraph 25 also as if for the words “the solicitor, the firm of solicitors or, as the case may be, the incorporated practice” there were substituted “the practitioner”;
 - (d) in subsection (3)—
 - (i) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “the Tribunal”;
 - (ii) in paragraph (b), for the words “(11)(b)” substitute “(8A)(b), (11)(b) or (11ZC)”;
 - (e) in subsection (4)—
 - (i) for the word “Court”, in both places where it occurs, substitute “court”;
 - (ii) in paragraph (a), after the word “(11A)” insert “(11B), (11C) or (11D)”.
- (9) In section 23 (interpretation of sections 16 to 22)—
 - (a) before the definition of “conveyancing practitioner”, insert—
 - ““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;”;
 - (b) after the definition of “the Council”, insert—
 - ““the court” means the Court of Session;”;
 - (c) the definition of “inadequate professional services” is repealed;
 - (d) after the definition of “relevant notarial services”, insert “;
“the Tribunal” means the Scottish Solicitors' Discipline Tribunal;

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“unsatisfactory professional conduct” has the meaning given (as respects a conveyancing practitioner or, as the case may be, an executry practitioner) by section 46 of the 2007 Act”.

- (10) In section 25 (rights to conduct litigation and rights of audience)—
- (a) in subsection (2)(b)(ii), for the words “this section” substitute “section 27 of this Act”;
 - (b) in subsection (2)(c)(i), for the words “this section” substitute “section 27 of this Act in the event of the application being granted”;
 - (c) in subsection (2)(c)(ii)—
 - (i) for the words from “made” to “public” substitute “remitted to the body under section 6(a) or 15(5)(a) of the 2007 Act”;
 - (ii) the words “the actings of” are repealed;
 - (iii) for the words “this section” substitute “section 27 of this Act in the event of the application being granted”;
 - (d) in subsection (3), for the words “this section” substitute “section 27 of this Act”.
- (11) In section 33 (complaints in relation to legal services) after subsection (5) insert—
- “(6) This section does not apply to any element of a conduct complaint other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (12) In section 44, after the definition of “the 1980 Act” insert—
- ““the 2007 Act” means the [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#).”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 4 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies) after the entry relating to the Scottish Legal Aid Board insert—
- “The Scottish Legal Complaints Commission”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 5 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities) after paragraph 92 insert—
- “92A The Scottish Legal Complaints Commission.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 6 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) after the entry relating to the Scottish Legal Aid Board insert—
- “Scottish Legal Complaints Commission”