

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

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

The Commissioner for Public Appointments in Scotland

Section 1 – The Commissioner for Public Appointments in Scotland

4. This section creates the office of the Commissioner for Public Appointments in Scotland; provides for the making of the appointment; and provides the basis on which this appointment is held.
5. *Subsection (1)* provides for the appointment of the Commissioner for Public Appointments in Scotland by Her Majesty on the nomination of Parliament.
6. *Subsection (2)* introduces schedule 1 which makes detailed provisions concerning the appointment, status and the administration of the office of Commissioner.

Section 2 – The Commissioner’s functions

7. This section and schedule 2 sets out the scope of the Commissioner for Public Appointments’ functions and powers.
8. *Subsection (1)* provides for the Commissioner to prepare a Code of Practice which regulates the process for making appointments and recommendations for appointments by the Scottish Ministers to the “specified authorities” which are the office and bodies listed in Schedule 2. The Commissioner’s remit applies to ministerial appointments and ministerial recommendations for appointment (in practice, Crown appointments), but not to the appointment of staff of the specified authorities.
9. *Subsections (2) and (3)* provide for the scope of the Code of Practice, which is to be prepared, amended and promulgated by the Commissioner.
10. *Subsection (4)* requires that the preparation of and revisions to the Code must be undertaken in consultation with the Scottish Ministers, the Parliament and the public.
11. In addition to preparing (and amending) a Code of Practice, *subsection (5)* provides that the Commissioner shall examine the methods and practices employed by the Scottish Ministers in making appointments and recommendations for appointments, including any particular appointment to those specified authorities listed in schedule 2. It also provides for the Commissioner to investigate complaints arising from any appointment to a specified authority.
12. *Subsection (6)* provides that the Commissioner can issue guidance on compliance with the Code of Practice to the Scottish Ministers, both generally or in specific cases where there is a breach of the Code.

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13. Following this, *subsection (7)* provides that, in any case where it appears to the Commissioner that the Code of Practice has not been complied with in a material regard (i.e. if there has been a serious breach of the Code), the Commissioner has intimated that fact to the Scottish Ministers, and the Commissioner considers that the Code is unlikely to be complied with, or has not been complied with, within a reasonable time, action must be taken under *subsection (8)*.
14. *Subsection (8)* provides that the Commissioner must report breaches of the Code by the Scottish Ministers which meet the criteria set out in *subsection (7)* to the Parliament. If the appointment has not been made, the Commissioner may direct the Scottish Ministers to delay making the appointment until consideration of the case has been concluded by the Parliament.
15. *Subsections (9) and (10)* provide that the Commissioner is to exercise functions with a view to ensuring that the appointments and recommendations for appointments to the specified authorities are made in a fair and open manner and that as far as possible all categories of people are given the opportunity to apply. In doing so, the Commissioner is to prepare a strategy in consultation with the Scottish Ministers and the Parliament which may include targets for ensuring diversity in the membership of public bodies.

Section 3 – The Commissioner’s functions: further provision

16. *Subsection (1)* requires that the Scottish Ministers provide the Commissioner with any information that he or she reasonably requires.
17. *Subsection (2)* provides that the Scottish Ministers may by order amend schedule 2. This power allows Ministers to add further offices or bodies to the list of “specified authorities” or to remove existing offices or bodies from that list. Section 18 provides that this order will be made under the “affirmative resolution” procedure in the Scottish Parliament. The Scottish Ministers will also have power to give the Commissioner additional functions or remove existing functions by order. This order will be made under the “affirmative resolution” procedure.
18. *Subsection (3)* brings appointments to bodies not yet existing in law within the remit of the Commissioner. That is, if an appointment round is started during the establishment period for a new body, the Commissioner will have the power to regulate the appointments process.

Dissolution of certain bodies

Section 4 – Dissolution of certain bodies

19. The Act provides for the abolition of certain bodies, specified in *paragraphs (a) – (e)* as:
 - (a) the Ancient Monuments Board for Scotland;
 - (b) the Historic Buildings Council for Scotland;
 - (c) the Scottish Hospital Trust;
 - (d) the Scottish Medical Practices Committee; and
 - (e) the Scottish Conveyancing and Executry Services Board.

Health Service Bodies

Section 5 – Property of the Scottish Hospital Trust

20. This section relates to the transfer of the endowments of the Scottish Hospital Trust to the fifteen Health Boards.

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21. *Subsection (1)* provides for the transfer of all the property held by the Scottish Hospital Trust, endowments held by statute and other endowments transferred to the Scottish Hospital Trust (by, for example, Boards of Management, Regional Hospital Boards, Health Boards and NHS trusts) and any accumulated income thereof to be transferred to the Health Boards.
22. *Subsection (2)* enables the Scottish Ministers to make regulations providing for the division of property transferred from the Scottish Hospital Trust between different Health Boards and provides for any of the Scottish Hospital Trust property to be realised for value and for that value to be transferred.
23. *Subsection (3)* requires there to be consultation with the Scottish Hospital Trust and all the Health Boards and NHS trusts before regulations are made.
24. *Subsection (4)* provides for a Health Board to transfer property which has been transferred to it from the Scottish Hospital Trust on to another Health Board subject to conditions of transfer which the Scottish Ministers may provide for through regulations.
25. *Subsection (5)* provides for endowments transferred under *subsection (4)* to be transferred back to the Health Board within a reasonable time, if the relevant Health Board requires this.
26. *Subsection (6)* defines the expression 'NHS trust'.

Section 6 – Transfer of certain property between Health Boards and NHS trusts

27. This section relates to the movement of endowments between Health Boards and NHS trusts.
28. *Subsection (1)* enables a Health Board to transfer property which has been transferred to it from the Scottish Hospital Trust, and which is attributable to a NHS trust, on to that trust. Such transfers will only be made following a request from the trust.
29. *Subsection (2)* provides for a NHS trust to transfer endowment property held by it (not limited to endowments transferred from the Scottish Hospital Trust) to any Health Board.
30. *Subsection (3)* provides for transferred endowments to be transferred back to the NHS trust within a reasonable time of the NHS trust requiring such a transfer.

Section 7 – Investment and borrowing

31. The provisions in section 7 relate to the powers of investment and borrowing by Health Boards and NHS trusts in respect of endowments.
32. The Scottish Hospital Trust was given specific powers of investment. *Subsection (1)* confers upon Health Boards like powers of investment and borrowing.
33. *Subsection (2)* requires Health Boards to seek financial advice with regard to such investments.
34. *Subsection (3)* permits a Health Board to borrow from any endowment which is attributable to it, subject to certain provisos.
35. *Subsections (4) and (5)* permit a Health Board to make loans to Health Boards and NHS trusts from endowments held by that Health Board but attributable to those other Health Boards or NHS trusts.
36. *Subsection (6)* permits NHS trusts to borrow from any endowment which it holds.
37. *Subsection (7)* requires Health Boards and NHS trusts to seek the consent of the Scottish Ministers to any loans or borrowing, under *subsections (3) to (6)*.

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38. *Subsection (8)* allows the Scottish Ministers to make provisions by regulations as to the terms and conditions to apply to any loans or borrowing.

Section 8 – Endowment schemes

39. *Section 8* relates to endowment schemes. The Scottish Hospital Trust had a scheme which provided for the distribution of income from endowments, the resolution of disputes and the application of income by recipients.
40. *Subsection (1)* requires the Scottish Ministers to make regulations providing for the distribution of income where Health Boards and NHS trusts hold endowments attributable to other Health Boards and NHS trusts.
41. *Subsection (2)* requires the Scottish Ministers to consult all Health Boards and NHS trusts on such a scheme, and
42. *Subsection (3)* requires the scheme to include the permitted purposes for which income from endowments may be used.

Section 9 – Directions in relation to endowments

43. *Section 9* relates to the giving of directions in relation to endowments and enables the Scottish Ministers to direct Health Boards and NHS trusts as to the manner in which endowments are held and or managed.

Section 10 – Holding of certain property by NHS trusts and Health Boards

44. The provisions in section 10 relate to the holding of endowments by Health Boards and NHS trusts.
45. *Subsection (1)* amends section 12G(3) of the 1978 Act to apply the terms of section 82 of that Act to the holding by a NHS trust of endowments transferred by virtue of the provisions of this Act. This therefore requires NHS trusts holding such endowments, so far as reasonably practicable, to meet the objects of the original endowment in the holding and use of endowments so transferred.
46. *Subsection (2)* amends section 82 of the 1978 Act to extend the application of that section to Health Boards holding endowments transferred by virtue of this Act.
47. *Subsection (3)* amends section 83 of the 1978 Act by adding a power for Health Boards to hold and administer property on trust for NHS trusts.

Law Society functions etc. as to certain legal services

Section 11 – Property etc. of the Scottish Conveyancing and Executory Services Board

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

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

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

Section 13 – Scottish Solicitors’ Discipline Tribunal and certain practitioners

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

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

51. This section provides practitioners with a limited range of notarial powers of direct relevance to their conveyancing duties with effect from the date of transfer of regulatory responsibility. The intention is that independent conveyancing practitioners, in particular, should be able to compete with solicitors on a level playing field. As independent conveyancing practitioners have not had the notarial powers required for certain conveyancing transactions, they have been obliged to date to engage the services of a notary in certain circumstances. Such action has been needed for example in cases where it has been necessary to notarise renunciations by a non-entitled spouse of occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the execution of a discharge of a burdens certificate under the Abolition of Feudal Tenure (Scotland) Act 2000.
52. This section also permits conveyancing practitioners to subscribe dispositions and standard securities, and executry practitioners to subscribe testamentary documents, on behalf of people who are blind or unable to write.

Section 15 – The Historic Environment Advisory Council for Scotland

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

Section 16 - The Advisory Council's Functions

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

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59. *Subsection (4)* provides that the new body provides advice whenever requested by Scottish Ministers or whenever the new body considers it appropriate to do so.

Miscellaneous provision

Section 17 - Miscellaneous provision

60. This section introduces schedule 4 which makes provision in connection with the dissolution of the bodies mentioned in section 4.

General provisions

Sections 18 and 19 – Orders and regulations, Ancillary provision

61. *Sections 18 and 19* provide that, where the Act gives the Scottish Ministers power to make an order or regulations, such power will be exercisable by statutory instrument. Some of the orders and regulations will be made under the negative resolution procedure and the remainder under the affirmative resolution procedure.

Schedule 1 - The Commissioner

Paragraph 1 – Disqualification

62. *Sub-paragraph (1)* sets out various persons who are disqualified from appointment, or from holding office, as Commissioner for Public Appointments in Scotland.
63. *Sub-paragraph (2)* sets out various offices and appointments which a person is disqualified from while holding office as the Commissioner for Public Appointments in Scotland.
64. *Sub-paragraph (3)* continues that disqualification for a period of 3 years after the Commissioner has ceased to hold that office unless the Parliament determines otherwise.

Paragraph 2 – Status

65. Provision is made under this paragraph as to the status of the Commissioner for Public Appointments in Scotland and staff of the Commissioner's office. Specific provision is made for the Commissioner for Public Appointments not to be subject to the control or direction of any member of the Parliament, of any member of the Scottish Executive or of the Parliamentary Corporation, unless otherwise indicated in the Act.

Paragraph 3 – Validity of actings

66. This provision ensures that the exercise by the Commissioner of his/her functions cannot be challenged on the grounds that there was a defect in the appointment, or the eligibility for appointment, of the Commissioner.

Paragraph 4 – Term of office and tenure

67. This provides that the Commissioner for Public Appointments in Scotland will hold office for a term determined by the Parliament which will not exceed 5 years, and for no more than 3 periods of office, with, as *sub-paragraph (2)(b)* states, appointment for a third term only if it is desirable in the public interest. The Commissioner may resign and may be removed from office. The Parliamentary corporation will determine the Commissioner for Public Appointments' other terms and conditions.

Paragraph 5 – Vacancy in the office of the Commissioner

68. Provision is made for the Parliamentary corporation to appoint an acting Commissioner for Public Appointments where the office of the Commissioner is vacant.

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Paragraph 6 – Remuneration

69. The Commissioner will receive a salary and allowances, the amount of which will be determined by the Parliament.

Paragraph 7 – Pensions etc

70. The Parliament may make arrangements for the payments of a pension, allowances or gratuity to a Commissioner on ceasing to hold office.

Paragraph 8 – Staff

71. The Commissioner has power, with the approval of the Parliament, to appoint staff. The Commissioner determines the terms and conditions of employment and may with the approval of the Parliament, make arrangements for the payment of pensions, allowances and gratuities to such staff when they cease to hold office.

Paragraph 9 – Assessors

72. *Sub-paragraph (1)* The Commissioner may appoint assessors to assist in the exercise of his/her functions.
73. *Sub-paragraph (2)* makes provisions that these assessors may be paid, with the approval of the Parliamentary Corporation.

Paragraph 10 – Delegation

74. This provides that any function of the Commissioner for Public Appointments may be exercised by another person (for example an assessor) with the authorisation of the Commissioner.

Paragraph 11 – Financial provision

75. This provides that the Parliamentary corporation pays the salary, allowances and expenses of the Commissioner for Public Appointments or Acting Commissioner.

Paragraph 12 – Accountable officer

76. Provision is made for the Parliamentary corporation to designate an accountable officer. This paragraph also describes the functions and duties of the accountable officer.

Paragraph 13 – Accounts and reports

77. This paragraph sets out the accounts and reports which should be prepared by the Commissioner.

Paragraph 14 – Functions: supplementary provision

78. *Paragraph 14* gives the Commissioner powers to enter into contracts and acquire or dispose of land or property in connection with his/her functions.

Schedule 2 – The Specified Authorities

79. This schedule lists those public authorities which come under the Commissioner for Public Appointments' remit.

Schedule 3 -The Advisory Council

Paragraphs 1 and 2 - Status

80. *Paragraphs 1 and 2* give the status of the new body. The new body will be a body corporate and as such will have legal personality.

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Paragraph 3 – Membership

81. *Paragraph 3* sets out the essential elements of the constitution of the new body. The new body will consist of such members as the Scottish Ministers may appoint. The Scottish Ministers will appoint one member as a chair. All appointments will be subject to the appropriate terms and conditions, including length of appointment.

Paragraph 4 – Allowances etc.

82. *Paragraph 4* provides for allowances to be paid to the chair and members of the new body and for remuneration to be paid to the chair.

Paragraph 5 – Proceedings

83. *Paragraph 5* lays down a framework for the proceedings of the new body. The new body will, within these limits, be able to set down its own procedures.

Paragraph 6 – Reports

84. *Paragraph 6* sets out the annual report which should be prepared by the new body.

Paragraph 7 – Functions: supplementary provision

85. *Paragraph 7* gives the new body powers to enter into contracts and other commercial arrangements in connection with its functions.

Schedule 4 – Miscellaneous provision

Paragraph 1 – Confirmation of Executors (Scotland) Act 1858 (c.56)

86. *Paragraph 1* repeals a reference in section 2 of the 1858 Act to a recognised financial institution providing executry services. The amendment takes account of the proposed repeal by this Act of section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, the purpose of which was to authorise the Scottish Conveyancing and Executry Services Board to consider applications from banks, building societies and other financial institutions to offer executry services.

Paragraph 2 – Historic Buildings and Ancient Monuments Act 1953 (c.49)

87. *Paragraph 2* repeals those sections of the Historic Buildings and Ancient Monuments Act 1953 setting up the Historic Buildings Council for Scotland.

Paragraph 3 – House of Commons Disqualification Act 1975 (c.24)

88. *Paragraph 3* makes modifications to the House of Commons Disqualification Act 1975 for the purposes of the Act. Sub-paragraph (a) removes the Scottish Medical Practices Committee and sub-paragraph (b) removes the Scottish Conveyancing and Executry Services Board from the list of bodies, membership of which acts as disqualification from membership of the House of Commons.

Paragraph 4 – Race Relations Act 1976 (c.74)

89. *Paragraph 4* makes modifications to the Race Relations Act 1976 for the purposes of the Act, removing the Ancient Monuments Board for Scotland, the Historic Buildings Council for Scotland, the Scottish Medical Practices Committee, and the Scottish Conveyancing and Executry Services Board from the list of bodies subject to the general statutory duty under the Act.

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Paragraph 5 – National Health Service (Scotland) Act 1978 (c.29)

90. *Paragraph 5* makes modifications to the National Health Service (Scotland) Act 1978 for the purposes of the Act.
91. *Sub-paragraph (2)* repeals section 3, which provides for the establishment of the Scottish Medical Practices Committee (SMPC).
92. *Sub-paragraph (3)* repeals section 11 of the 1978 Act under which the Scottish Hospital Trust is constituted.
93. *Sub-paragraph (4)* amends subsection 19A(2) of the 1978 Act. Section 19A provides for the basis on which a medical practitioner is entitled to be included in a Health Board's medical list of persons with whom the Board may arrange to provide general medical services. The amendment is needed because, on abolition of the SMPC, a medical practitioner will no longer be nominated to the Committee for appointment to fill a vacancy.
94. *Sub-paragraph (5)* amends subsections 19B(2)(a)(b)(c) and (e) of the 1978 Act. Section 19B gives the Scottish Ministers power to make regulations on filling vacancies for medical practitioners to provide general medical services. Subsection 19B lists matters which the regulations may, in particular, include. Under subsections 19B(2)(a) to (c), regulations may include provision for references by a Health Board to the SMPC as to whether there is or will be a vacancy for a general medical practitioner in a locality; the determination of such references by the SMPC; and the determination by the SMPC of conditions of practice to be imposed on a practitioner who fills a particular vacancy. The amendments are needed to strip out the involvement of the SMPC and make consequential adjustments to the role of the Health Board.
95. *Sub-paragraph (6)* amends section 20 of the 1978 Act. Section 20 provides that all applications made to a Health Board for inclusion in a list kept by that Board of the names of medical practitioners undertaking to provide general medical services shall be referred by the Board to the SMPC, which shall then consider and grant applications. *Sub-paragraph (6)(a)* removes the role of the SMPC and provides for applications to be considered and granted by the Health Board.
96. For an applicant who is a national of a member state of the European Union, section 20(1A) of the 1978 Act requires the Health Board to apply a knowledge of English test to the procedure under section 20. *Sub-paragraph (6)(b)* amends section 20(1A) to reflect the abolition of the SMPC while retaining the procedure on knowledge of English.
97. *Sub-paragraph (7)* amends section 21 of the 1978 Act. Section 21 provides that regulations under section 19B of the 1978 Act must secure that a medical practitioner is not nominated (to the SMPC) or approved by the Health Board for appointment to fill a vacancy unless he or she is suitably experienced. The amendment is needed because, on abolition of the SMPC, a medical practitioner will no longer be nominated to the Committee.
98. *Sub-paragraph (8)* amends the definition of "applicant" in section 22 of the 1978 Act. Section 22 gives the Scottish Ministers power to make regulations for prescribing the medical experience needed for the purposes of section 21 of the 1978 Act. The amendment is needed because, on abolition of the SMPC, a medical practitioner will no longer be nominated to the Committee.
99. Section 23 of the 1978 Act gives Scottish Ministers the power to specify the maximum number of medical practitioners with whom all Health Boards taken as a whole may enter into arrangements for the provision of general medical services. *Sub-paragraph (9)* amends section 23(1B) to remove reference to the SMPC.

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100. *Sub-paragraph (10)* repeals section 24, which provides for the conferring or imposing on the SMPC of additional functions in relation to arrangements for the provision of general medical services.
101. *Sub-paragraphs (11)-(14)* repeal miscellaneous references to the SMPC where they appear in the 1978 Act.
102. *Sub-paragraph (15)* repeals Schedule 1 (health boards), paragraph 16 of the National Health Service (Scotland) 1978 Act which gave Health Boards the power to transfer endowments to the Scottish Hospital Trust.
103. *Sub-paragraph (16)* repeals Schedule 2 of the 1978 Act, which details the membership and procedure of the SMPC.
104. *Sub-paragraph (17)* repeals Schedule 6 to the National Service (Scotland) 1978 Act under which the Scottish Hospital Trust is constituted.
105. *Sub-paragraph (18)* amends Schedule 9 of the 1978 Act. Schedule 9 supplements section 35 of that Act which sets out provisions under which it is unlawful to sell the goodwill of a medical practice. *Sub-paragraph (18)* amends Schedule 9 to transfer to the Health Board functions of the SMPC in providing certificates to the effect that a transaction does not amount to a sale of the goodwill.

Paragraph 6 – Ancient Monuments and Archaeological Areas Act 1979 (c.46)

106. *Paragraph 6* repeals those sections of the Ancient Monuments and Archaeological Areas Act 1979 setting up the Ancient Monuments Board for Scotland.

Paragraph 7 – Solicitors (Scotland) Act 1980 (c.46)

107. This paragraph amends section 32 of the 1980 Act, which makes it an offence for unqualified persons to prepare certain documents, to substitute a reference to “conveyancing practitioner” for an existing reference to “qualified conveyancer”.

Paragraph 8 – Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c.73)

108. *Sub-paragraph (a)* repeals Section 54 subsection (1) of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 in so far as it relates to Schedule 6 of the 1978 Act and *(b)* repeals an amendment to paragraph 4 of Schedule 6 to the 1978 Act as Schedule 6 is repealed under *paragraph 7(17)* to this schedule.

Paragraph 9 – Legal Aid (Scotland) Act 1986 (c.47)

109. This paragraph repeals a reference to recognised financial institutions in section 43A(1) of the 1986 Act; and substitutes a reference to “conveyancing practitioners” for a reference to “qualified conveyancers”.

Paragraph 10 – Electricity Act 1989 (c.29)

110. *Paragraph 10* repeals the duty placed by Schedule 9 of the Electricity Act 1989 on a licence holder or an authorised person to generate or supply electricity to consult with the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland over a statement of how sites, buildings and objects of architectural, historic or archaeological interest will be protected.

Paragraph 11 – National Health Service and Community Care Act 1990 (c.19)

111. *Sub-paragraph (a)* repeals an amendment to section 24 of the 1978 Act as section 24 is repealed under *paragraph 7(10)* to this schedule.
112. *Sub-paragraph (b)* repeals an amendment to section 11 and Schedule 6 of the 1978 Act as section 11 and Schedule 6 is repealed under *paragraph 7(3)* and *(17)* to this schedule.

Paragraph 12 – Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c.40)

113. *Paragraph 12* makes substantive changes to sections 16 to 18 and 20 to 23 of the 1990 Act, inserts new sections 20A, 21A, 21B and 21C, amends sections 33, 34, 40 and 42, and repeals section 19 and Schedule I.
114. *Sub-paragraph (2)*. This sub-paragraph substitutes a new section 16 in the 1990 Act which confers the function of regulating the provision of conveyancing and executry services under sections 17 to 23 of the 1990 Act on the Council of the Law Society of Scotland. The Scottish Ministers are empowered to make grants to the Council towards expenses incurred, or to be incurred, by them in connection with the exercise of that function and such grants may be made subject to terms and conditions.
115. *Sub-paragraph (3)– Conveyancing practitioners*. This sub-paragraph amends the main provisions dealing with conveyancing practitioners in section 17 of the 1990 Act. The Council of the Law Society of Scotland is to take over the Board's responsibility for maintaining a register of conveyancing practitioners, which is to include entries in respect of all conveyancing practitioners registered with the Board immediately before its abolition takes effect. Entries in the register which relate to independent conveyancing practitioners are to be annotated to that effect. The Council may charge such fees for registration as they may determine. In granting an application for registration, the Council may attach such conditions as they may determine; when attaching conditions or when refusing an application, the Council must give the applicant written reasons for their decision.
116. The effect of the repeal of section 17(7) of the 1990 Act is that the Council of the Law Society of Scotland will not be able to consider applications for registration as an independent conveyancing practitioner, though practitioners already registered with the Board as independent conveyancing practitioners will be able to continue to practise in that capacity.
117. Section 17(3) and (11) of the 1990 Act are replaced by new subsection (11) which gives the Council powers to make rules for regulating the conduct and practice of conveyancing practitioners and independent conveyancing practitioners. The Council is to assume the powers of the Board to make rules as to the requirements to be satisfied by applicants for registration as conveyancing practitioners in relation to educational qualifications and practical training. The powers of the Scottish Ministers to make regulations to maintain appropriate standards of conduct and practice by independent conveyancing practitioners are transferred to the Council, but as a power to make rules for such matters. Rules made by the Council are to be approved by the Lord President of the Court of Session and the Scottish Ministers after consultation with the Director General of Fair Trading. Existing rules and regulations made by the Board or the Scottish Ministers are kept in effect, but the Council is given the power to amend or repeal them.
118. *Sub-paragraph (4) – Executry practitioners*. This sub-paragraph amends the main provisions dealing with executry practitioners in section 18 of the 1990 Act. The Council of the Law Society of Scotland is to take over the Board's responsibility for maintaining a register of executry practitioners, which is to include entries in respect of all executry practitioners registered with the Board immediately before its abolition takes effect. Applications may be made only by natural persons; section 18(3) of the 1990 Act is repealed as it does not relate to natural persons, but to recognised financial institutions in terms of section 19 of the 1990 Act. The Council may charge such fee for registration as they may determine.
119. Section 18(10) of the 1990 Act gave the Scottish Ministers powers to make regulations to maintain appropriate standards of conduct and practice of executry practitioners, and to make provision as to educational qualifications and practical training. Under the new subsection (10) the Council is to assume these powers, but as powers to make rules

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which will require the approval of the Lord President of the Court of Session, and the Scottish Ministers after consultation with the Director General of Fair Trading.

120. *Sub-paragraph (5) – Executry services by recognised financial institutions.* This sub-paragraph repeals section 19 of the 1990 Act which provided for the Board to vet applications from financial institutions such as banks and building societies to perform executry work. It was intended that applicant institutions should satisfy the Board that they complied with requirements set out in regulations regarding educational qualifications and practical training for those of their employees to be engaged in the provision of executry services and related complaint procedures. Section 19 has not been brought into force and is now to be repealed.
121. *Sub-paragraph (6) – Professional misconduct, inadequate professional services, etc.* This sub-paragraph amends section 20 of the 1990 Act to implement the detailed changes required to that Act in relation to disciplinary arrangements for conveyancing and executry practitioners (see text on section 13 above).
122. *Sub-paragraphs (6)(d) and (e)* transfer from the Board to the Scottish Solicitors' Discipline Tribunal powers to suspend or revoke a registration, impose a fine of up to £10,000 or censure a practitioner. These will be the main sanctions available to the Tribunal where it is satisfied after an inquiry that a practitioner has been guilty of professional misconduct or has provided inadequate professional services; or where a practitioner has been convicted by any court of an act involving dishonesty or been sentenced to a term of imprisonment of not less than 2 years.
123. *Sub-paragraph (7)* inserts a new section 20A into the 1990 Act which requires the Council of the Law Society of Scotland to establish a review procedure in relation to their decisions to refuse to grant an application for registration; or to grant such an application subject to conditions; or to exercise their disciplinary powers under section 20(2) of the 1990 Act. The new section follows the equivalent requirement on the Board in paragraph 15 of Schedule 1, which is to be repealed.
124. *Sub-paragraph (9) – Powers of investigation* inserts a new section 21A into the 1990 Act which provides the Council and the Scottish Solicitors' Discipline Tribunal with powers of investigation in relation to disciplinary inquiries and related matters. The new section replicates the powers of investigation conferred on the Board by Part II of Schedule 1 to the 1990 Act, which is to be repealed.
125. *Sub-paragraph (9) – Procedures of the Scottish Solicitors' Discipline Tribunal* inserts a new section 21B into the 1990 Act which applies existing Tribunal powers and procedures in relation to solicitors under Schedule 4 to the Solicitors (Scotland) Act 1980 to (a) any inquiries by the Tribunal into complaints against conveyancing and executry practitioners, and (b) appeals by such practitioners against disciplinary steps taken against them.
126. *Sub-paragraph (9) – Compensation fund* also inserts a new section 21C into the 1990 Act which empowers the Council to establish and maintain a fund to compensate clients who have suffered pecuniary loss because of dishonesty on the part of an independent conveyancing practitioner or an executry practitioner who provides executry services to the public for a fee, gain or reward. The Council may enter into a contract of insurance for the purpose of guaranteeing the sufficiency of the fund and may make rules with regard to the fund's operation. The Scottish Ministers may make contributions to the fund and defray any premium, fee or other expense payable by the Council in relation to any contract of insurance. The fund managed by the Board is transferred to and vested in the Council; the Board's rules in relation to the operation of the fund are kept in force and the Council is given the power to amend or repeal them.

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

Paragraph 13 – Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 (c.9)

127. *Sub-paragraph (a)* removes the duty on the Scottish Ministers to consult with the Historic Buildings Council for Scotland as to the makings of grants or loans for the preservation or enhancement of conservation areas.
128. *Sub-paragraphs (b) and (c)* remove the provision that the Scottish Ministers may consult with the Historic Buildings Council for Scotland as to the making of town scheme agreements with local authorities and as to the making of grants for the repair of buildings in town schemes.

Paragraph 14 – National Health Service (Primary Care) Act 1997 (c.46)

129. *Paragraph 16* makes modifications to the National Health Service (Primary Care) Act 1997 for the purposes of the Act. Sub-paragraph 16(a) repeals subsection 5(5) of the 1997 Act, which lays a requirement on Scottish Ministers to consult the Scottish Medical Practices Committee.
130. *Sub-paragraphs (b) to (d)* make other minor changes consequential to the abolition of the Scottish Medical Practices Committee.

Paragraph 15 – Ethical Standards in Public Life (Scotland) Act 2000 (asp 7)

131. *Paragraph 15* repeals the entry in schedule 3 (devolved public bodies) of the Ethical Standards in Public Life (Scotland) Act 2000 relating to the Scottish Conveyancing and Executry Services Board, and the Scottish Medical Practices Committee. Paragraph 16 – [Scottish Public Services Ombudsman Act 2002 \(asp 11\)](#)
132. *Paragraph 16* repeals the entry to schedule 2 of the Scottish Public Services Ombudsman Act 2002 relating to the Scottish Medical Practices Committee and inserts an entry for the Commissioner for Public Appointments in Scotland..

Paragraph 17 - Freedom of Information (Scotland) Act 2002 (asp 13)

133. *Paragraph 17* repeals the entry in schedule 1 of the Freedom of Information (Scotland) Act 2002 relating to the Scottish Hospital Trust, the Scottish Medical Practices Committee and the Scottish Conveyancing and Executry Services Board and inserts entries for the Commissioner for Public Appointments and the Historic Environment Advisory Council for Scotland.