

**Changes to legislation:** There are currently no known outstanding effects for the Solicitors (Scotland) Act 1988, SCHEDULE 1. (See end of Document for details)

## SCHEDULES

### SCHEDULE 1

Section 6(1).

#### AMENDMENTS TO SOLICITORS (SCOTLAND) ACT 1980

- 1 The <sup>M1</sup>Solicitors (Scotland) Act 1980 shall be amended in accordance with the following provisions of this Schedule.

#### Marginal Citations

**M1** 1980 c. 46.

- 2 At the end of section 7 (keeping of roll of solicitors by the Council), there shall be added the following subsection—
- “(4) Schedule 2 (powers of Council in relation to roll of solicitors) shall have effect.”
- 3 In section 9 (removal of name from roll of solicitors on request), for the words from “—(a)” to “satisfying the Tribunal” there shall be substituted the words “ on the solicitor satisfying the Council ”.
- 4 In section 10 (restoration of name to roll of solicitors on request)—
- (a) in subsection (1), the words “whose name has been removed from the roll under section 9 or” shall cease to have effect; and
- (b) after subsection (1) there shall be inserted the following subsection—
- “(1A) On an application to the Council from a solicitor whose name has been removed from the roll under section 9 the Council may, after such inquiry as they think proper, restore the name of that solicitor to the roll.”
- 5 In section 15(2) (cases where notice of intention to apply for practising certificate required), after paragraph (i) there shall be inserted the following—
- “; or
- (j) while any thing required to be done by him by a direction of the Council under section 42A or of the Tribunal under section 53A (including any such direction as confirmed or varied on appeal) remains undone.”
- 6 After subsection (5) of section 19 (further provisions relating to suspension of practising certificates) there shall be inserted the following subsection—
- “(5A) Where a solicitor is suspended from practice as a solicitor by virtue of paragraph (a) or (b) of section 18(1), the period of suspension shall, for the purposes of section 15(2)(f), expire on the solicitor ceasing to be liable to be detained or subject to guardianship or, as the case may be, on the *curator bonis* being discharged.”

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- 7 In section 32(1)(b) (offence for unqualified person to draw or prepare writ relating to legal proceedings), for the words “legal proceedings” there shall be substituted the words “ action or proceedings in any court ”.
- 8 In section 33(b) (unqualified persons not entitled to fees, etc), the words “gives legal advice or” shall cease to have effect.
- 9 In section 35(1)(a) (accounts rules), after the words “subsection (2)” there shall be inserted the words “ or with a building society ”.
- 10 In section 36 (interest on client’s money)—
- (a) in subsection (1)(a), after the word “bank” in the first place where it occurs there shall be inserted the words “ or with a building society ”; and
  - (b) in subsection (3), after the word “account” in the second place where it occurs there shall be inserted the words “ at a bank or with a building society ”.
- 11 In section 38(2)(b) (powers of Council where dishonesty alleged), for the word “it” in the second place where it occurs there shall be substituted the word “ its ”.
- 12 In section 40(1) (powers of Council where accounts rules etc not complied with), after the words “incorporated practice” in the third place where they occur there shall be inserted the words “ has failed or ”.
- 13 In section 41(a) (appointment of judicial factor), the words “to a material extent” shall cease to have effect.
- 14 In section 51 (complaints to Tribunal)—
- (a) in subsection (2), after the words “applicable to it” there shall be inserted the words “ or a solicitor or an incorporated practice may have provided inadequate professional services ”;
  - (b) in subsection (3), after paragraph (e) there shall be added the following paragraph—
    - “(f) the lay observer.”; and
  - (c) after subsection (3) there shall be added the following subsection—
    - “(4) Where a report is made to the Tribunal under subsection (2) the Tribunal may, if it thinks fit, appoint a solicitor to prosecute the complaint and the expenses of the solicitor, so far as not recoverable from the solicitor complained against, shall be paid out of the funds of the Tribunal.”
- 15 In section 52(2) (rules of Tribunal), after paragraph (a) there shall be inserted the following paragraph—
- “(aa) for regulating the making, hearing and determining of appeals made to it under section 42A(7) or 53D(1);”.
- 16 In section 53 (powers of Tribunal in relation to complaints)—
- (a) after paragraph (f) of subsection (2) there shall be added the following—
    - “; or
    - (g) order that an investment business certificate issued to a solicitor, a firm of solicitors or an incorporated practice be—
      - (i) suspended for such time as they may determine; or

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- (ii) subject to such terms and conditions as it may direct; or
  - (iii) revoked.”;
- (b) after subsection (3) there shall be inserted the following subsection—
  - “(3A) The powers conferred by subsection (2)(c), (d) and (e) may be exercised by the Tribunal—
    - (a) in relation to a former solicitor, notwithstanding that his name has been struck off the roll or that he has, since the date of the misconduct, conviction or sentence referred to in subsection (1)(a) or (b), ceased to practise as a solicitor or been suspended from practice;
    - (b) in relation to a body corporate which was formerly an incorporated practice, notwithstanding that the body has, since the date of the conviction or failure referred to in subsection (1)(c) or (d), ceased to be recognised as an incorporated practice by virtue of section 34(1A).”;
- (c) after subsection (6A) there shall be inserted the following subsections—
  - “(6B) Where the Tribunal make an order under subsection (2)(g), they may direct that the order shall take effect on the date on which it is intimated to the solicitor, firm or incorporated practice; and if any such direction is given the order shall take effect accordingly.
  - (6C) The Council shall give effect to any order of the Tribunal under subsection (2)(g).”;
- (d) in subsection (7)—
  - (i) for the words “or (6A)” there shall be substituted the words “, (6A) or (6B)”; and
  - (ii) after the words “(6A)” in the second place where they occur there shall be inserted the words “ or (6B) ”;
- (e) after subsection (7) there shall be inserted the following subsection—
  - “(7A) In subsection (2)(g), section 53D(1) and paragraph 16(h) of Schedule 4, “investment business certificate” means a certificate issued by the Council under Rule 2.2 of the Solicitors (Scotland) (Conduct of Investment Business) Practice Rules 1988.”; and
- (f) in subsection (8)—
  - (i) after the word “amend” there shall be inserted “ —(a) ”; and
  - (ii) at the end there shall be added the following paragraph—
    - “(b) the definition of “investment business certificate” in subsection (7A) by substituting for the reference to Rule 2.2 of the Solicitors (Scotland) (Conduct of Investment Business) Practice Rules 1988, or such reference replacing that reference as may for the time being be specified in that subsection, a reference to such Practice Rule as may from time to time replace Rule 2.2.”

17 After section 53C (inserted by section 3 of this Act) there shall be inserted the following section—

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**“53D Suspension etc. of investment business certificates: appeal to Tribunal.**

- (1) Where, in accordance with rules made under this Act, the Council suspend or withdraw an investment business certificate or impose conditions or restrictions on it the solicitor, firm of solicitors or incorporated practice to whom it was issued may, within 21 days of the date of intimation of the decision of the Council, appeal to the Tribunal against that decision.
- (2) On an appeal to the Tribunal under subsection (1) the Tribunal may quash, confirm or vary the decision being appealed against.
- (3) Section 54(1) shall apply to a decision of the Tribunal under subsection (2) as it applies to a decision of the Tribunal relating to discipline under this Act.”
- 18 In section 57(5) (fees for admission and enrolment of solicitors as notaries public), for the words from “fees” to the end there shall be substituted the words “ reasonable fees as the clerk may fix ”.
- 19 In section 61 (protection of banks in transactions with solicitors), after the word “bank” in each place where it occurs there shall be inserted the words “ or building society ”.
- 20 In section 65(1) (interpretation)—
- (a) after the definition of “advocate” there shall be inserted the following definition—
- ““building society” means a building society within the meaning of the Building Societies Act 1986;”;
- (b) in the definition of “client account”, after the words “savings account” there shall be inserted the words “ at a bank or with a building society ”.
- 21 In Schedule 1 (constitution and proceedings of the Law Society of Scotland), in paragraph 7D for the words “entitled to attend and vote” there shall be substituted the word “ voting ”.
- 22 In Schedule 2 (provisions regarding maintenance of roll of solicitors)—
- (a) in paragraph 1, the words “The Lord President may authorise” shall cease to have effect and after the word “practicable” there shall be inserted the words “ shall have power ”; and accordingly in the heading to the Schedule, for the words “DIRECTIONS BY THE LORD PRESIDENT” there shall be substituted the words “ POWERS OF THE COUNCIL ”; and
- (b) after paragraph 3 there shall be added the following paragraph—
- “4 Subject to section 7(3), the Council may charge such reasonable fees (including an annual fee payable by enrolled solicitors) as they may fix in connection with the keeping of the roll.”.
- 23 In Schedule 4 (constitution, procedure and powers of Tribunal)—
- (a) after paragraph 5(c) there shall be added the following—
- “and
- (d) there are present not more than 3 solicitor members for every lay member.”;
- (b) after paragraph 8 there shall be inserted the following paragraph—
- “8A Where a complaint is made to the Tribunal by a person other than—

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- (a) the Council; or
- (b) a person mentioned in section 51(3),  
the Tribunal may remit the complaint to the Council.”;
- (c) in paragraph 9, in each of sub-paragraphs (a)(i) and (b), after the word “Act” in the second place where it occurs there shall be inserted the words “ or, as the case may be, of provision of inadequate professional services ”;
- (d) in paragraph 16—
  - (i) after sub-paragraph (e) there shall be inserted the following—
    - “; or
    - (f) containing a direction under section 53A or an order under section 53C(2); or
    - (g) confirming or varying a determination or direction of the Council on an appeal under section 42A(7); or
    - (h) ordering that an investment business certificate issued to a solicitor, a firm of solicitors or an incorporated practice be—
      - (i) suspended; or
      - (ii) subject to such terms and conditions as they may direct; or
      - (iii) revoked,”;
    - (ii) after the word “appeal” in the first place where it occurs there shall be inserted the words “ (if any) ”;
    - (iii) for “(e)” in the second place where it occurs there shall be substituted “ (h) ”; and
    - (iv) after the words “53(6)” there shall be inserted the words “ or (6B) ”; and
- (e) after paragraph 22 there shall be added the following—

*“ Appeals*

- 23 The foregoing provisions of Part II of this Schedule shall apply in relation to an appeal to the Tribunal under section 42A(7) or section 53D(1) as they apply in relation to a complaint, but with the following modifications—
  - (a) for references to a complaint there shall be substituted references to an appeal;
  - (b) for references to the respondent there shall be substituted references to the appellant;
  - (c) paragraphs 8A, 9 and 10 shall not apply; and
  - (d) in paragraph 19 the words “against a solicitor” shall be omitted.
- 24 Subject to Part IV, the Tribunal may dismiss an appeal without holding an inquiry if—
  - (a) they are of the opinion that the appeal is manifestly ill-founded; or
  - (b) the appellant fails to comply with any rule made under section 52.

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- 25 The Tribunal shall give notice of the appeal to the person by whom the original complaint was made (referred to in this Schedule as “the complainer”) and to the Council and shall enquire into the matter, giving the appellant and the complainer reasonable opportunity to make representations to the Tribunal.”
- 24 In paragraph 9 of Schedule 6 (saving for non-qualified person to conduct certain proceedings), for the words “legal proceedings” there shall be substituted the words “ action or proceedings in any court ”.

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