



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART II

RIGHT TO PRACTISE AS A SOLICITOR

Qualifications and Training

4 Qualifications for practising as solicitor

—No person shall be qualified to practise as a solicitor unless—

- (a) he has been admitted as a solicitor; and
- (b) his name is on the roll; and
- (c) subject to section 24, he has in force a certificate issued by the Council in accordance with the provisions of this Part authorising him to practise as a solicitor (referred to in this Act as a "practising certificate").

5 Training regulations

(1) The Council may, with the concurrence of the Lord President, make regulations for—

- (a) practical training;
- (b) attendance at a course of legal education ;
- (c) the passing of examinations.

(2) Regulations under this section—

- (a) may make such incidental, consequential and supplemental provisions as the Council consider necessary or proper in relation to the matters specified in subsection (1);
- (b) may include provision for the charging by the Council of fees and the application thereof ; and
- (c) may make different provision for different circumstances.

Admission

6 Admission as solicitor

- (1) Subject to the provisions of this section, no person shall be admitted as a solicitor in Scotland unless—
 - (a) he is aged 21 years or over ; and
 - (b) he has satisfied the Council by affidavit or otherwise—
 - (i) that he has complied with the provisions of any regulations made under section 5 that apply to him, and
 - (ii) that he is a fit and proper person to be a solicitor, and has obtained from the Council a certificate to that effect; and
 - (c) he has paid such sum in respect of his admission as has been fixed by the Council with the approval of the Lord President.
- (2) If any person who has complied with the requirements of subsection (1) applies by petition to the Court for admission as a solicitor and produces the certificate mentioned in paragraph (b) of that subsection, the Court shall make an order admitting him as a solicitor.
- (3) If any person has not obtained from the Council a certificate to the effect mentioned in paragraph (b) of subsection (1) but has otherwise satisfied the requirements of that subsection the Court, on such an application being made by him and on being satisfied after such inquiry as it thinks fit, that—
 - (a) he is a fit and proper person to be admitted as a solicitor, and
 - (b) he is competent to be a solicitor,may make an order admitting him as a solicitor.
- (4) Any order admitting a person as a solicitor under this section shall include a direction to the Council to enter the name of that person in the roll.
- (5) Nothing in this section affects the operation of the Colonial Solicitors Act 1900 or any Order in Council made under that Act (admission as solicitors in Scotland of solicitors of certain overseas territories).
- (6) Every person who has been enrolled as a law agent shall be deemed to be admitted as a solicitor.

The Roll

7 Keeping the roll

- (1) The Council shall continue to be the registrar of solicitors and shall keep at the office of their secretary a roll of solicitors (in this Act referred to as " the roll ").
- (2) The roll shall consist of the names in alphabetical order of all solicitors entered on it in accordance with section 8.
- (3) Any person may inspect the roll during office hours without payment.

8 Entry in roll

- (1) On production to the Council of an order under section 6 admitting a person as a solicitor and directing that his name be entered on the roll the Council shall enter the name of that person on the roll.
- (2) Any solicitor whose name is entered on the roll (in this Act referred to as " an enrolled solicitor ") shall, on such enrolment, inform the Council in writing of the address of his place of business, and shall on any change of that address, inform them in writing of his new address.
- (3) The Council shall issue a certificate of enrolment to any enrolled solicitor who applies for it.

9 Removal of name from roll on request

—An enrolled solicitor who wishes his name to be removed from the roll of solicitors may make an application to the Council in that behalf, and the Council shall—

- (a) in any case where the application is made with the consent of the Tribunal;
 - (b) in any other case, on the solicitor satisfying the Tribunal that he has made adequate arrangements with respect to the business he has then in hand,
- remove the name of that solicitor from the roll.

10 Restoration of name to roll on request

- (1) A solicitor whose name has been removed from the roll under section 9 or whose name has been struck off the roll other than by order of the Court, shall only be entitled to have his name restored to the roll, if on an application in that behalf made by him to the Tribunal and after such inquiry as the Tribunal thinks proper, the Tribunal so orders.
- (2) Rules made by the Tribunal under section 52 may—
 - (a) regulate the making, hearing and determining of applications under subsection (1);
 - (b) provide for payment by the applicant to the Council of such fee in respect of restoration to the roll as the rules may specify.

11 Directions by Lord President

- (1) The Lord President may give directions to the Council in relation to the carrying out of their duties in connection with the keeping of the roll and they shall give effect to any such direction.
- (2) Schedule 2 shall have effect in relation to any such directions.

12 Power of Court to prescribe fees

- (1) Fees payable to the Council in respect of matters arising in connection with the keeping of the roll may be prescribed by rules of court.
- (2) Fees payable under subsection (1) include an annual fee payable by enrolled solicitors in respect of the cost of keeping the roll.

Practising Certificates

13 Applications for practising certificates

- (1) Subject to this section and sections 14 to 24, the Council may make rules with respect to—
 - (a) applications for practising certificates;
 - (b) the issue of practising certificates ;
 - (c) the keeping of a register of applications for and the issue of practising certificates.
- (2) Any person may inspect the register during office hours without payment.
- (3) The making of a false statement by a solicitor in an application for a practising certificate may be treated as professional misconduct by him for the purposes of Part IV, unless he proves the statement was made without intention to deceive.

14 Issue of practising certificate

- (1) The Council shall issue to an enrolled solicitor on application being duly made by him, a practising certificate in accordance with rules made by them under section 13.
- (2) The Council shall not issue a practising certificate to a solicitor while he is suspended from practice.

15 Discretion of Council in special cases

- (1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a practising certificate, notice of his intention to do so; and the Council may in their discretion—
 - (a) grant or refuse the application, or
 - (b) decide to issue a certificate to the applicant subject to such conditions as the Council may think fit.
- (2) Subject to subsections (3) and (4), this section shall have effect in any case where a solicitor applies for a practising certificate—
 - (a) still having to serve a post qualifying obligatory year of practical training in terms of an undertaking by him to that effect in his indenture of apprenticeship; or
 - (b) not having held a practising certificate in force within the period of 12 months following the date of his admission; or
 - (c) when a period of 12 months or more has elapsed since he held a practising certificate in force ; or
 - (d) without having paid in full any fine imposed on him under Part IV; or
 - (e) without having paid in full any expenses for which he has been found liable under section 38 or Part IV; or
 - (f) when, having been suspended from practice, the period of suspension has expired ; or
 - (g) when, having had his name struck off the roll, his name has been restored to the roll; or

- (h) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or
 - (i) when, after a complaint has been made—
 - (i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply which would enable the Council to dispose of the matter ; or
 - (ii) of delay in the disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so,and in either case has been notified in writing by the Council accordingly.
- (3) Where a practising certificate free of conditions is issued by the Council under subsection (1) to a solicitor in relation to whom this section has effect by reason of any such circumstances as are mentioned in paragraphs (b), (c), (f), (g) or (h) of subsection (2), this section shall not thereafter have effect in relation to that solicitor by reason of those circumstances.
- (4) Where the Council decide to issue a practising certificate subject to conditions, they may, if they think fit, postpone the issue of the certificate pending the hearing and determination of an appeal under section 16.

16 Appeals from decisions of Council

- (1) Where an application for a practising certificate is duly made to the Council otherwise than in a case where section 15 has effect and the Council refuse or neglect to issue a practising certificate, the applicant may apply to the Court, who may make such order in the matter as it thinks fit.
- (2) Where the Council in exercise of the power conferred on them by section 15, refuse to issue a practising certificate, or issue a practising certificate subject to conditions, the applicant may appeal to the Court against that decision within 14 days of being notified of it.
- (3) On an appeal to the Court under subsection (2) the Court may—
- (a) affirm the decision of the Council; or
 - (b) direct the Council to issue a practising certificate to the applicant subject to such conditions if any as the Court may think fit; or
 - (c) make such other order as it thinks fit.

17 Date and expiry of practising certificates

- (1) Every practising certificate issued in November of any year shall bear the date of 1st November in that year, and every other practising certificate shall bear the date of the day on which it was issued.
- (2) Every practising certificate shall have effect from the date it bears under subsection (1).
- (3) Subject to subsection (4), every practising certificate shall expire on 31st October next after it is issued.
- (4) On the name of any solicitor being struck off the roll or on a solicitor being suspended from practice as a solicitor, any practising certificate for the time being in force of that

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solicitor shall cease to have effect, but in the case of suspension, if he ceases to be so suspended during the period for which the practising certificate would otherwise have continued in force, the certificate shall thereupon again have effect.

18 Suspension of practising certificates

- (1) If—
 - (a) in pursuance of the Mental Health (Scotland) Act 1960, a solicitor is, by reason of mental disorder, admitted to a hospital and becomes liable to be detained there or becomes subject to guardianship;
 - (b) a *curator bonis* is appointed on the estate of a solicitor;
 - (c) the estate of the solicitor is sequestrated ;
 - (d) a solicitor grants a trust deed for behoof of creditors;
 - (e) a judicial factor is appointed on the estate of the solicitor under section 41;any practising certificate for the time being in force of that solicitor shall cease to have effect, and he shall be suspended from practice as a solicitor.
- (2) On the occurrence of any of the circumstances mentioned in paragraphs (c), (d) or (e) of subsection (1), the solicitor in question shall intimate those circumstances to the Council in writing immediately.
- (3) On the occurrence of the circumstances mentioned in paragraphs (d) or (e) of subsection (1) the trustee or as the case may be the judicial factor shall intimate his appointment to the Council in writing immediately.

19 Further provisions relating to suspension of practising certificates

- (1) The provisions of this section have effect in relation to a practising certificate which has ceased to have effect by virtue of section 18 during the period when that certificate would, but for that section, have continued in force.
- (2) A practising certificate which has ceased to have effect by virtue of paragraph (a) of section 18(1) shall again have effect on the solicitor ceasing to be liable to be detained or subject to guardianship.
- (3) A practising certificate which has ceased to have effect by virtue of paragraph (b) of section 18(1) shall again have effect on the *curator bonis* being discharged.
- (4) A practising certificate which has ceased to have effect by virtue of paragraphs (c) or (d) of section 18(1) shall again have effect on the solicitor being granted his discharge.
- (5) A practising certificate which has ceased to have effect by virtue of paragraph (e) of section 18(1) shall again have effect on the judicial factor being granted his discharge.
- (6) Where a solicitor is suspended from practice as a solicitor by virtue of paragraphs (c), (d) or (e) of section 18(1), he may at any time apply to the Council to terminate the suspension.
- (7) On an application under subsection (6), the Council may either—
 - (a) grant the application with or without conditions; or
 - (b) refuse the application

- (8) If on an application by a solicitor under subsection (6), the Council refuse the application or grant it subject to conditions, the solicitor may appeal against the decision to the Court, who may—
- (a) affirm the decision ; or
 - (b) vary any conditions imposed by the Council; or
 - (c) terminate the suspension either with or without conditions.

20 Council's duty to supply lists of solicitors holding practising certificates

- (1) The Council shall send a list of all solicitors holding practising certificates for the practice year then current—
- (a) to the Keeper of the Registers of Scotland; and
 - (b) to each sheriff clerk ;
- as soon as practicable after 1st December in each year.
- (2) The Council shall send a list of all such solicitors carrying on business in Edinburgh to the Principal Clerk of Session as soon as practicable after 1st December in each year.
- (3) The Council shall notify those persons to whom they have sent lists under this section of any changes in those lists.

21 Consultants to hold practising certificates

- (1) A consultant shall be treated for the purposes of this Act as a practising solicitor and the provisions relating to practising certificates and, subject to subsection (2), the Guarantee Fund shall apply to him.
- (2) The Council may if they think fit exempt a consultant from any of the provisions of section 43 or Schedule 3 (the Guarantee Fund).
- (3) In this section " consultant" means any solicitor who not being in partnership with a solicitor or other solicitors causes or permits his name to be associated with the name of that solicitor or those solicitors or their firm's name, whether he is described as a consultant or adviser or in any other way.

22 Evidence as to holding of practising certificates

- (1) Any list purporting to be issued by the Council and to contain the names of solicitors in Scotland who have before 1st December in any year obtained practising certificates for the period of 12 months from 1st November in that year shall, until the contrary is proved, be evidence that the persons named in that list are solicitors holding such certificates.
- (2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as a solicitor under a certificate for the current year, but in the case of any such person an extract from the roll certified as correct by the Council shall be evidence of the facts appearing in the extract.

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23 Offence to practise without practising certificate

- (1) Any person who practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence under this Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.
- (2) Without prejudice to any proceedings under subsection (1), failure on the part of a solicitor in practice to have in force a practising certificate may be treated as professional misconduct for the purposes of Part IV.

24 Saving for public officials

Nothing in this Act shall require a practising certificate to be taken out by a person who is by law authorised to act as a solicitor to a public department without admission, or by any assistant or officer appointed to act under the direction of any such solicitor.

Rights of Solicitors

25 Rights of practising

Every person qualified to practise as a solicitor in accordance with section 4 may practise as a solicitor in any court in Scotland.

Restriction on rights of practising

26 Offence for solicitors to act as agents for unqualified persons

- (1) Any solicitor to whom this subsection applies who upon the account or for the profit of any unqualified person—
 - (a) acts as agent in any action or proceedings in any court, or
 - (b) permits or suffers his name to be made use of in any way in any such action or proceedings ; or
 - (c) draws or prepares any writ to which section 32 applies, or
 - (d) permits or suffers his name to be made use of in the drawing or preparing of any such writ; or
 - (e) does any other act to enable that person to appear, act or practise in any respect as a solicitor or notary public,knowing that person not to be a qualified solicitor or notary public, as the case may be, shall be guilty of an offence.
- (2) Subsection (1) applies to any solicitor, not being a solicitor who is employed full-time on a fixed salary by a body corporate.
- (3) In this section " person " includes a body corporate.

27 Offence for solicitors to share fees with unqualified persons

- (1) Subject to subsection (2) any solicitor who shares with an unqualified person any profits or fees derived from any solicitor's business transacted by him shall be guilty of an offence.

- (2) Subsection (1) does not apply to a solicitor sharing the profits or fees derived from such a business with—
- (a) a person who has ceased to practise as a solicitor if such share—
 - (i) is in respect of the price or value of the business transferred by that person to him; or
 - (ii) is a voluntary or other allowance made to that person as a former partner in the business; or
 - (b) the widow, heirs, executors, representatives, next of kin, or dependents of any deceased solicitor who was a partner in the business at the date of his death, or whose business he has purchased or succeeded to; or
 - (c) any clerk or assistant who is wholly employed by him if such share is a salary partly or wholly paid on the basis of a percentage of those profits; or
 - (d) any public officer if such share is in respect of work done in the course of his duty; or
 - (e) a person qualified to act as a solicitor in some part of the United Kingdom other than Scotland or in any British possession if such share is paid in accordance with an agreement between them for sharing fees.
- (3) In paragraph (e) of subsection (2), " British possession " means any part of Her Majesty's dominions outside the United Kingdom as at 1st March 1934.

28 Offence for solicitors who are disqualified to seek employment without informing employer

—Any person who—

- (a) has been struck off the roll; or
- (b) suspended from practice as a solicitor,

and while so disqualified from practice seeks or accepts employment by a solicitor in connection with that solicitors practice without previously informing him that he is so disqualified, shall be guilty of an offence.

29 Restriction on borrowing processes

- (1) A solicitor shall not be entitled to borrow the process in any proceedings depending before the Court unless he has a place of business in Edinburgh.
- (2) A solicitor shall not be entitled to borrow the process in any proceedings depending before an inferior court unless he has a place of business within the jurisdiction of that court.

30 Liability for fees of other solicitor

Where a solicitor, authorised by and acting for a client employs another solicitor he shall (whether or not he discloses the client) be liable to the other solicitor for that other solicitor's fees and outlays, unless at the time of the employment he expressly disclaims any such liability.

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Unqualified persons acting as solicitors

31 Offence for unqualified person to pretend to be solicitor

Any unqualified person (including a body corporate) who either by himself or together with others, wilfully and falsely—

- (a) pretends to be a solicitor or notary public ; or
- (b) takes or uses any name, title, addition or description implying that he is duly qualified to act as a solicitor or a notary public or recognised by law as so qualified ;

shall be guilty of an offence.

32 Offence for unqualified person to prepare certain documents

(1) Subject to the provisions of this section, any unqualified person (including a body corporate) who draws or prepares—

- (a) any writ relating to heritable or moveable estate; or
- (b) any writ relating to any legal proceedings; or
- (c) any papers on which to found or oppose an application for a grant of confirmation in favour of executors,

shall be guilty of an offence.

(2) Subsection (1) shall not apply—

- (a) to an unqualified person if he proves that he drew or prepared the writ or papers in question without receiving, or without expecting to receive, either directly or indirectly, any fee, gain or reward ; or
- (b) to an advocate; or
- (c) to any public officer drawing or preparing writs in the course of his duty ; or
- (d) to any person employed merely to engross any writ.

(3) In this section " writ " does not include—

- (a) a will or other testamentary writing;
- (b) a document in *re mercatoria*, missive or mandate;
- (c) a letter or power of attorney;
- (d) a transfer of stock containing no trust or limitation thereof.

33 Unqualified persons not entitled to fees, etc.

No fee, reward, outlay or expenses on account of or in relation to any act or proceeding done or taken by any person who—

- (a) acts as a solicitor or as a notary public without being duly qualified so to act; or
- (b) not being so qualified, gives legal advice or frames or draws any writs to which section 32 applies,

shall be recoverable by any person in any action or matter.