

**Changes to legislation:** Solicitors (Scotland) Act 1980, Part II is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 4

#### CONSTITUTION, PROCEDURE AND POWERS OF TRIBUNAL

**Modifications etc. (not altering text)**

- C1 Sch. 4 applied (with modifications) (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 13}

#### PART II

#### PROCEDURE AND POWERS OF TRIBUNAL

**Modifications etc. (not altering text)**

- C1 Sch. 4 Pt. II (paras. 7–22) applied by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), ss. 31(10), 45, Sch. 4 para. 2

#### *Complaints*

- 7 The making of a complaint to the Tribunal or the giving of any information in connection with a complaint shall confer qualified privilege.

**Modifications etc. (not altering text)**

- C2 Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), Sch. 4 para. 12(9); S.S.I. 2003/384, art. 2)

- 8 A complaint made to the Tribunal shall not be withdrawn except with the Tribunal's leave and subject to such conditions with respect to expenses or otherwise as the Tribunal thinks fit.

**Modifications etc. (not altering text)**

- C3 Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), Sch. 4 para. 12(9); S.S.I. 2003/384, art. 2)

- 8A F1 .....

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#### Textual Amendments

- F1** Sch. 4 para. 8A repealed (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(26\)\(a\)](#) (with s. 77); S.S.I. 2008/311, [art. 2](#)

- 9 Subject to Part IV, the Tribunal may dismiss a complaint against a solicitor [<sup>F2</sup>or an incorporated practice]—
- (a) without requiring the solicitor [<sup>F2</sup>or the incorporated practice] to answer the allegations made against him [<sup>F2</sup>or, as the case may be, it] or without holding any enquiry if—
- (i) they are of the opinion that the complaint discloses no *prima facie* case of professional misconduct on the part of the solicitor [<sup>F2</sup>or, of failure on the part of the incorporated practice to comply with any provision of this Act or of rules made under this Act]. . . ; or
- (ii) the complainer fails to comply with any rule made under section 52; or
- (b) without hearing parties if they are of the opinion upon consideration of the complaint and other documents that they disclose no case of professional misconduct on the part of the solicitor [<sup>F2</sup>or, of failure on the part of the incorporated practice to comply with any provision of this Act or of rules made under this Act]. . . .

#### Textual Amendments

- F2** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 35\(a\)](#)

#### Modifications etc. (not altering text)

- C4** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. 17, 21(2) (3), [Sch. 4 para. 12\(9\)](#); S.S.I. 2003/384, [art. 2](#))

- 10 The Tribunal shall give notice of the complaint to the solicitor [<sup>F3</sup>or incorporated practice] against whom the complaint is made (“the respondent”) and shall enquire into the complaint, giving him [<sup>F3</sup>or, as the case may be, it] reasonable opportunity of making his [<sup>F3</sup>or, as the case may be, its] defence.

#### Textual Amendments

- F3** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 35\(b\)](#)

- 11 For the purpose of enquiring into the complaint the Tribunal may administer oaths and receive affirmations; and the complainer and respondent shall each be entitled—
- (a) to require the evidence of parties, witnesses and others interested, and
- (b) to call for and recover such evidence and documents, and examine such witnesses, as they think proper, but no person shall be compelled to produce any document which he could not be compelled to produce in an action.

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**Modifications etc. (not altering text)**

- C5** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 12 On a petition by the complainer or the respondent to the Court, or to the sheriff having jurisdiction in any place in which the respondent carries on business, the Court or, as the case may be, the sheriff, on production of copies (certified by the Clerk of the Tribunal) of the complaint and answers, if lodged, together with a statement signed by the clerk specifying the place and date of the hearing of the complaint and certifying that notice to that effect has been given to the complainer and to the respondent, and on being satisfied that it would be proper to compel the giving of evidence by any witness or the production of documents by any haver, may—
- (a) grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Tribunal, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation;
  - (b) grant warrant for the recovery of documents; and
  - (c) appoint commissioners to take the evidence of witnesses, to examine havers, and to receive exhibits and productions.

*Decisions*

- 13 The Tribunal shall set out in their decision—
- (a) in the case of a complaint, the facts proved, and
  - (b) in the case of a conviction, particulars of the conviction and sentence.
- and shall in the case of a complaint add to their decision a note stating the grounds on which the decision has been arrived at.

**Modifications etc. (not altering text)**

- C6** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 14 Every decision on the Tribunal shall be signed by the chairman or other person presiding and [<sup>F4</sup>shall, subject to paragraph 14A, be published in full].

**Textual Amendments**

- F4** Words in Sch. 4 para. 14 substituted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(d)**; S.I. 1991/1252, art. 3, **Sch.1**

**Modifications etc. (not altering text)**

- C7** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

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- [<sup>F5</sup>14A In carrying out their duty under paragraph 14, the Tribunal may refrain from publishing any names, places or other facts the publication of which would, in their opinion, damage, or be likely to damage, the interests of persons other than—
- (a) the solicitor against whom the complaint was made; or
  - (b) his partners; or
  - (c) his or their families,
- but where they so refrain they shall publish their reasons for so doing.]

#### Textual Amendments

- F5** Sch. 4 para. 14A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(e)**; S. I 1991/1252, art. 3, Sch.1

#### Modifications etc. (not altering text)

- C8** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 15 A copy of every decision by the Tribunal certified by the clerk shall be sent forthwith by the clerk to the respondent [<sup>F6</sup>, the complainer and, as the case may be, the person who made the complaint as respects which the appeal was made to the Tribunal] intimating the right of appeal available from that decision under this Act.

#### Textual Amendments

- F6** Words in Sch. 4 para. 15 substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(b)** (with s. 77); S.S.I. 2008/311, **art. 2**

#### Modifications etc. (not altering text)

- C9** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 16 In the case of a decision by the Tribunal—
- (a) ordering a solicitor to be struck off the roll; or
  - (b) ordering a solicitor to be suspended from practice; or
  - (c) censuring a solicitor [<sup>F7</sup>or an incorporated practice]; or
  - (d) fining a solicitor [<sup>F7</sup>or an incorporated practice], [<sup>F8</sup>or
  - (e) order that the recognition under section 34(1A) of an incorporated practice be revoked][<sup>F9</sup>; or
  - (f) <sup>F10</sup> .....
  - (g) <sup>F10</sup> .....
  - (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,]

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on the expiration of the days of appeal [<sup>F11</sup>(if any)] without an appeal being lodged or, where an appeal has been lodged, if and as soon as the appeal is withdrawn or a decision by the Court is given in terms of subparagraphs (a) to [<sup>F12</sup>(h)] or in the case of a decision of the Tribunal under section 53(6) [<sup>F13</sup>or (6B)] which has not been varied or quashed by the Court [<sup>F7</sup>or under section 53(6A) which has not been varied by the court], the clerk of the Tribunal shall immediately send to the Council a copy of the decision of the Tribunal certified by him and a copy of the decision by the Court in any appeal, and the Council shall forthwith give effect to any order as to striking the solicitor off the roll and to any terms and conditions directed by the Tribunal under section 53(5); and in any other case shall cause a note of the effect of the decision to be entered against the name of the solicitor in the roll [<sup>F14</sup>or as revoking the recognition under section 34(1A) of an incorporated practice].

#### Textual Amendments

- F7** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 35(c)**
- F8** Word “or” and para. 16(1)(e) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 35(c)**
- F9** Sch. 4 para. 16(f)–(h) and word “; or” inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)**
- F10** Sch. 4 para. 16(f)(g) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(19)(b), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F11** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)(ii)**
- F12** “(h)” substituted by virtue of Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)(iii)**
- F13** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)(iv)**
- F14** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 35(c)**

- 17 The Council shall forthwith intimate any order striking a solicitor off the roll or suspending a solicitor from practice to each sheriff clerk and <sup>F15</sup> . . . , to the Principal Clerk of Session, and shall [<sup>F16</sup>, without prejudice to paragraph 14,] cause a notice of the operative part of the order to be published in the Edinburgh Gazette <sup>F17</sup>[ . . . ]

#### Textual Amendments

- F15** Words in Sch. 4 para. 17 repealed (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(f)(i), **Sch. 9**; S.I. 1991/1252, art. 3, **Sch. 1**
- F16** Words in Sch. 4 para. 17 inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(f)(ii)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F17** Words in Sch. 4 para. 17 repealed (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(f)(iii), **Sch. 9**; S.I. 1991/1252, art. 3, **Sch. 1**

- 18 The file of orders under this Act striking solicitors off the roll, suspending solicitors from practice, or restoring persons to the roll shall be open for inspection at the office of the Society at any reasonable hour by any person without payment of any fee.

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- [<sup>F18</sup>18A Without prejudice to paragraph 18, the Council shall ensure that a copy of every decision published under paragraph 14 is open for inspection at the office of the Society during office hours by any person without payment of any fee.]

**Textual Amendments**

**F18** Sch. 4 para. 18A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(g)**; S.I. 1991/1252, art. 3, **Sch.1**

**Modifications etc. (not altering text)**

**C10** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

*Expenses*

- 19 Subject to the provisions of Part IV, the Tribunal may make in relation to any complaint against a solicitor such order as it thinks fit as to the payment by the complainer or by the respondent of the expenses incurred by the other party and by the Tribunal or a reasonable contribution towards those expenses.

**Modifications etc. (not altering text)**

**C11** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 20 On the application of the person in whose favour an order for expenses under paragraph 19 is made and on production of a certificate by the clerk of the Tribunal that the days of appeal against the order have expired without an appeal being lodged or, where such an appeal has been lodged, that the appeal has been dismissed or withdrawn, the Court may grant warrant authorising that person to recover those expenses from the person against whom the order was made.

**Modifications etc. (not altering text)**

**C12** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 21 Such warrant shall have effect for execution and for all other purposes as if it were an extracted decree of court awarded against the person against whom the order of the Tribunal was made.

**Modifications etc. (not altering text)**

**C13** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

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- 22 The expenses of the Tribunal so far as not otherwise defrayed shall be paid by the Society as part of the expenses of the Society.

**Modifications etc. (not altering text)**

- C14** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), Sch. 4 para. 12(9); S.S.I. 2003/384, art. 2)

*[<sup>F19</sup> Appeals*

**Textual Amendments**

- F19** Sch. 4 paras. 23–25 added by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), Sch. 1 para. 23(e)

- 23 The foregoing provisions of Part II of this Schedule shall apply in relation to an appeal to the Tribunal under section [<sup>F20</sup>42ZA(9), (10), (11) or (12), section 42ZD(1)]<sup>F21</sup> . . . or section 53D(1) as they apply in relation to a complaint, but with the following modifications—
- (a) for references to a complaint [<sup>F22</sup>(except in paragraph 14A)] there shall be substituted references to an appeal;
  - (b) <sup>F23</sup> . . . . .
  - (c) paragraphs <sup>F24</sup> . . . 9 and 10 shall not apply;
    - [<sup>F25</sup>(ca) in paragraph 11, for the words “complainer and respondent” there shall be substituted “ parties to the appeal ”;
    - (cb) in paragraph 12—
      - (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”;
    - [<sup>F26</sup>(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;]

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#### Textual Amendments

- F20** Words in Sch. 4 para. 23 inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(i)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F21** Words in Sch. 4 para. 23 repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(19)(c), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F22** Words in Sch. 4 para. 23(a) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(ii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F23** Sch. 4 para. 23(b) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(iii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F24** Words in Sch. 4 para. 23(c) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(iv)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F25** Sch. 4 para. 23(ca)-(ce) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(v)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F26** Sch. 4 para. 23(d) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(vi)** (with s. 77); S.S.I. 2008/311, **art. 2**

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.

25 The Tribunal shall give notice of the appeal to the [<sup>F27</sup> 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,] to the Council and shall enquire into the matter, giving the appellant and the complainer reasonable opportunity to make representations to the Tribunal.]

#### Textual Amendments

- F27** Words in Sch. 4 para. 25 substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(d)** (with s. 77); S.S.I. 2008/311, **art. 2**



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 12A(2)(ba) inserted by [2010 asp 16 s. 118\(3\)](#)
- s. 32(1)(d) and word inserted by [2010 asp 16 s. 118\(2\)\(a\)\(i\)](#)
- s. 32(2D) inserted by [2010 asp 16 s. 118\(2\)\(a\)\(iv\)](#)
- Sch. 4 para. 1A(b)(ia) inserted by [2010 asp 16 s. 118\(2\)\(b\)](#)