



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

An Act, as respects Scotland, to make new provision for the regulation of charities; to provide for the establishment of a board having functions in connection with the provision of conveyancing and executry services by persons other than solicitors, advocates and incorporated practices; to provide as to rights of audience in courts of law, legal services and judicial appointments, and for the establishment and functions of an ombudsman in relation to legal services; to amend the law relating to liquor licensing; to make special provision in relation to the giving of evidence by children in criminal trials; to empower a sheriff court to try offences committed in the district of a different sheriff court in the same sheriffdom; to provide as to probation and community service orders and the supervision and care of persons on probation and on release from prison and for supervised attendance as an alternative to imprisonment on default in paying a fine; to amend Part I of the Criminal Justice (Scotland) Act 1987 with respect to the registration and enforcement of confiscation orders in relation to the proceeds of drug trafficking; to amend section 24 of the Housing (Scotland) Act 1987; to provide a system for the settlement by arbitration of international commercial disputes; to amend Part II of the Unfair Contract Terms Act 1977; and to make certain other miscellaneous reforms of the law.

[1st November 1990]

<sup>X1</sup>Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Editorial Information

**X1** The text of ss. 71, 75 was taken from S.I.F. Group 1 (Agency), ss. 66, 75, Sch 7 from S.I.F. Group 5 (Arbitration), ss. 1–15, 73, 75 from S.I.F. Group 19 (Charities), ss. 72, 74, 75, Sch. 8 para. 33, Sch. 9 from S.I.F. Group 27 (Companies), ss. 35, 74, 75, Sch. 4, Sch. 8 paras. 26, 38 from S.I.F. Group 36:1 (Courts, Scotland), ss. 60–63, 74, 75, Sch. 6, Sch. 8 paras. 27, 28, 30, 37 from S.I.F. Group 39:1

**Status:** Point in time view as at 01/12/2001. This version of this Act contains provisions that are not valid for this point in time.

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(Criminal Law), ss. 56–59, 70, 75 from S.I.F. Group 47 (Evidence), ss. 45–55, 74, 75, Sch. 5, Sch. 8 Pt. I (paras. 1–18), Sch. 9 from S.I.F. Group 68A:2 (Intoxicating Liquor), and ss. 16–44, 64, 65, 67–69, 73–75, Schs. 1–3, Sch. 8 paras. 19–25, 29, 31, 32, 34–36, 39, Sch. 9 from S.I.F. Group 76:2 (Lawyers and Notaries).

#### Extent Information

**E1** Act extends to Scotland but for minor exceptions see [s. 75\(6\)\(7\)](#)

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

**C1** Act: power to modify conferred (2.4.2001) by [2000 c. 39, s. 7\(2\)](#); [S.I. 2001/766, art. 2\(1\)\(a\)](#)

## PART I

### CHARITIES

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

**C2** [Pt. I](#) (ss. 1-15): functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by [S.I. 1999/678, arts. 2, 3, Sch. \(with art. 7\)](#)

### *Recognition of charities*

#### 1 Information as to recognised charities.

- (1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise shall prevent the Commissioners of Inland Revenue (in this section referred to as “the Commissioners”) from disclosing—
  - (a) to the Lord Advocate, information as regards any recognised body such as is mentioned in subsection (2) below,
  - (b) to any person who requests it, the name of any recognised body and the address last used by the Commissioners for any communication with the body and the year when such communication occurred.
- (2) A recognised body referred to in subsection (1)(a) above is a body—
  - (a) which appears to the Commissioners to be or to have been carrying on activities which are not charitable or to be or to have been applying any of its funds for purposes which are not charitable;
  - (b) which is certified by the Lord Advocate as being a body in respect of which information has been provided to the Scottish charities nominee by a relevant institution in pursuance of section 12 of this Act.
- (3) Where any information is made available to any person as mentioned in subsection (1) (b) above, the Commissioners shall include in such information any matter noted by them in respect of the body in pursuance of a requirement made by the Lord Advocate under this Part of this Act.

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- (4) A recognised body shall provide to any person who requests it, on payment of such reasonable charge in respect of copying and postage as the body may stipulate, a copy of its explanatory document.
- (5) Where any recognised body, within one month of its being requested to do so by any person, fails to provide to that person a copy of its explanatory document as mentioned in subsection (4) above, the Lord Advocate, on a complaint being made to him by such person, may direct that the fact of such failure shall be noted for the purposes of subsection (3) above.
- (6) Where there has been a failure such as is mentioned in subsection (5) above, the court may, on an application being made by the Lord Advocate, interdict the body and any person concerned in its management or control from engaging in any activity specified in the application until the Lord Advocate intimates to the court that he is satisfied that the explanatory document has been provided.
- (7) In this Part of this Act “recognised body” means any body to which the Commissioners have given intimation, which has not subsequently been withdrawn, that relief will be due under section 505 of the <sup>M1</sup>Income and Corporation Taxes Act 1988 in respect of income of the body which is applicable and applied to charitable purposes only, being a body—
- (a) which is established under the law of Scotland; or
  - (b) which is managed or controlled wholly or mainly in or from Scotland,
- and a recognised body shall be entitled to describe itself as “a Scottish charity”.
- (8) For the purposes of any proceedings under or by virtue of this Part of this Act, a certificate purporting to be signed by a person authorised to do so by the Commissioners and certifying that a body is a recognised body shall be sufficient evidence of that fact and of the authority of that person.
- (9) In this section “explanatory document” means—
- (a) the trust deed of a body or other document constituting the body; or
  - (b) such other document as the Lord Advocate may approve,
- being a document which describes the nature of the body and of its charitable purposes.

#### Commencement Information

**II** S. 1 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

#### Marginal Citations

**M1** 1988 c. 1.

## 2 Non-recognised bodies.

- (1) A non-recognised body shall not be entitled to represent itself or hold itself out as a charity.
- (2) For the purposes of this Part of this Act, any body which is not—
- (a) a recognised body; or
  - (b) a body which is—

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- (i) registered as a charity in England and Wales under section 4 of the <sup>M2</sup>Charities Act 1960; or
  - (ii) a charity which is not required to register by virtue of subsection (4) of that section,
- is a non-recognised body.
- (3) Where a non-recognised body represents itself or holds itself out as a charity, the court may, on an application made by the Lord Advocate, interdict the body from so representing itself or holding itself out until it becomes a body such as is mentioned in paragraph (a) or (b) of subsection (2) above.

#### Commencement Information

**I2** S. 2 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

#### Marginal Citations

**M2** 1960 c. 58.

### 3 Designated religious bodies.

- (1) The Secretary of State may from time to time, by order, designate for the purposes of this section such recognised bodies as appear to him—
- (a) to have as their principal purpose the promotion of a religious objective;
  - (b) to have as their principal activity the regular holding of acts of public worship; and
  - (c) to be bodies which satisfy each of the conditions mentioned in subsection (2) below.
- (2) The conditions referred to in subsection (1)(c) above are—
- (a) subject to subsection (4) below, that the body has been established in Scotland for not less than 10 years;
  - (b) that the body can demonstrate to the satisfaction of the Secretary of State that it has a membership of not less than 3,000 persons resident in Scotland who are 16 years of age or more; and
  - (c) that the internal organisation of the body is such that one or more authorities in Scotland exercise supervisory and disciplinary functions in respect of the component elements of the body and, in particular, that there are imposed on such component elements requirements as to the keeping of accounting records and the auditing of accounts which appear to the Secretary of State to correspond to those required by sections 4 and 5 of this Act.
- (3) Where a body is, for the time being, designated under subsection (1) above the following provisions of this Part of this Act shall not apply to the body nor to any component or structural element of the body which is, itself, a recognised body—
- section 1(6);
  - section 4;
  - section 5, other than subsections (6) to (8) and subsection (12);
  - section 6(2) and (6);
  - section 7; and
  - section 8.

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- (4) The Secretary of State may determine that the condition mentioned in subsection (2) (a) above shall not be required to be satisfied in the case of a body—
- (a) which has been created by the amalgamation of two or more bodies each of which, immediately before the amalgamation, either was designated under this section or appears to the Secretary of State to have been eligible for such designation; or
  - (b) which has been constituted by persons who have removed themselves from membership of a body which, immediately before such removal, was so designated or appears to the Secretary of State to have been eligible for such designation.

#### Commencement Information

- I3** S. 3 wholly in force; s. 3(1) in force for certain purposes at 4.7.1992 and s. 3 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

### *Charities accounts*

#### **4 Duty to keep accounting records.**

- (1) The persons concerned in the management or control of every recognised body shall ensure that there are kept in respect of the body, accounting records which are sufficient to show and explain the body's transactions and which are such as to—
- (a) disclose with reasonable accuracy, at any time, the financial position of the body at that time; and
  - (b) enable them to ensure that any statement of accounts prepared under section 5 of this Act complies with the requirements of that section.
- (2) The accounting records shall in particular contain—
- (a) entries showing from day to day all sums of money received and expended by the body, and the matters in respect of which the receipt and expenditure takes place; and
  - (b) a record of the assets and liabilities of the body.
- (3) The accounting records which are required by this section to be kept in respect of a recognised body shall be preserved, without prejudice to any requirement of any other enactment or rule of law, for six years from the date on which they are made.
- (4) The Secretary of State may, by regulations—
- (a) prescribe requirements as to the places where and the persons by whom the accounting records of recognised bodies, including bodies which have been wound up or have ceased to be active, are to be kept; and
  - (b) provide that such class or classes of recognised body as may be prescribed shall be exempt from such requirements of this section and section 5 of this Act as may be prescribed.

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#### Commencement Information

- I4** S. 4 wholly in force; s. 4(4) in force at 4.7.1992 and s. 4 wholly in force at 30.9.1992 see s. 75(2) and S.I. 1992/1599, arts.3,6, Schs. 1, 4.

## 5 Annual accounts and report.

- (1) The persons concerned in the management or control of every recognised body shall ensure that, in respect of each financial year of the body, there is prepared a statement of accounts.
- (2) Subject to subsection (3) below, the statement of accounts of every recognised body shall comprise—
  - (a) a balance sheet as at the last day of the year;
  - (b) an income and expenditure account; and
  - (c) a report as to the activities of the body, having regard to its charitable purposes.
- (3) As regards such class or classes of recognised body as the Secretary of State may, by regulations, prescribe a recognised body may elect that in respect of any financial year its statement of accounts shall, instead of the requirements of subsection (2) above, comprise—
  - (a) a statement of balances as at the last day of the year;
  - (b) a receipts and payments account; and
  - (c) a report as to the activities of the body, having regard to its charitable purposes.
- (4) The balance sheet shall give a true and fair view of the state of affairs of the body as at the end of the financial year; and the income and expenditure account shall give a true and fair view of the surplus or deficit of the body for the financial year.
- (5) The Secretary of State may, by regulations, prescribe—
  - (a) the form and content of the statement of accounts;
  - (b) any additional information to be provided by way of notes to the accounts; and
  - (c) such requirements as to auditing of the balance sheet, statement of balances, income and expenditure account and receipts and payments account and any notes thereon and as to the consideration of the report as he considers appropriate,
 and different provision may be prescribed for different bodies or classes of bodies.
- (6) The Lord Advocate may require any recognised body to furnish him, without payment therefor, with a copy of its statement of accounts.
- (7) Every such body shall—
  - (a) make available to any person who requests it, on payment of such reasonable charge in respect of copying and postage as the body may stipulate, a copy of its most recent statement of accounts;
  - (b) inform any person who requests it of its accounting reference date.
- (8) Where any recognised body fails, within 10 months, or such longer period as the Lord Advocate may allow, after the end of a financial year, to have prepared a statement of accounts, the Lord Advocate may require that such fact shall be noted for the purposes of section 1(3) of this Act.

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(9) Where a body has failed to have prepared a statement of accounts as mentioned in subsection (8) above, the Lord Advocate may require the persons concerned in the management or control of the body to have prepared a statement of accounts, by such date as he may require.

(10) In any case where the statement of accounts has not been prepared by the date specified under subsection (9) above, the Lord Advocate may appoint a suitably qualified person to prepare a balance sheet and income and expenditure account or, in the case of a body which belongs to a class to which subsection (3) above applies if it appears to such person more appropriate to do so, a statement of balances and receipts and payments account; and a person so appointed shall be entitled, for that purpose—

- (a) on giving prior notice in writing, to enter, at all reasonable times, the premises of the body;
- (b) to take possession of any document appearing to him to relate to the financial affairs of the body;
- (c) to require any person concerned in the management or control of the body to give him such information as he may reasonably require relating to the activities of the body,

and the persons concerned in the management or control of the body shall be personally liable jointly and severally for the expenses incurred in the performance of his functions under this section by any person so appointed.

(11) A person appointed under subsection (10) above shall make a report to the Lord Advocate as to the affairs and accounting records of the body and shall send a copy of the report to any person appearing to him to be concerned in the management and control of the body.

(12) Where any such body, within one month of its being requested to do so by any person—

- (a) fails to provide to that person a copy of its most recent statement of accounts as mentioned in subsection (7) above; or
- (b) fails to inform that person of its accounting reference date,

the Lord Advocate, on a complaint being made to him by such person, may direct that the fact of such failure shall be noted for the purposes of section 1(3) of this Act.

(13) Where in the case of any recognised body, there has been a failure such as is mentioned in subsection (9) or (12) above the court may, on an application being made by the Lord Advocate, interdict the body and any person concerned in its management or control from engaging in any activity specified in the application until the Lord Advocate intimates to the court that he is satisfied that the failure has been rectified.

(14) Section 4 of this Act and subsections (1), (2), (3), (4), (5), (8), (9), (10) and (11) and, so far as it relates to a failure such as is mentioned in the said subsection (9), subsection (13) of this section shall not apply to any recognised body which is —

- (a) a company within the meaning of section 735 of the <sup>M3</sup>Companies Act 1985; or
- (b) an unregistered company to which Part VII of that Act (accounts and audit) applies by virtue of section 718 of that Act,

and, in the application of the remainder of this section to such a body, references to its income and expenditure account and its report shall be construed as references to its profit and loss account and its directors' report.

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#### Commencement Information

**I5** S. 5 wholly in force; s. 5(3)(5) in force for certain purposes at 4.7.1992 and wholly in force at 30.9.1992 see s. 75(2) and S.I. 1992/1599, arts.3,6 Schs. 1, 4.

#### Marginal Citations

**M3** 1985 c. 6.

### *Supervision of charities*

## **6 Powers of Lord Advocate to investigate charities and to suspend trustees.**

- (1) The Lord Advocate may at any time make inquiries, either generally or for particular purposes, with regard to—
  - (a) a recognised body;
  - (b) a registered, or non-registered, charity operating as such in Scotland; or
  - (c) a non-recognised body which appears to him to represent itself or hold itself out as a charity and—
    - (i) is established under the law of Scotland;
    - (ii) is managed or controlled wholly or mainly in or from Scotland; or
    - (iii) has any moveable or immoveable property situated in Scotland,
 or with regard to any class of any such bodies.
- (2) Where it appears to the Lord Advocate—
  - (a) in the case of a body referred to in paragraph (a) or (b) of subsection (1) above—
    - (i) that there is or has been any misconduct or mismanagement in its administration; or
    - (ii) that it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes; or
  - (b) in any other case, that a body is a non-recognised body which appears to him to represent itself or hold itself out as a charity,
 he may, if the body is managed or controlled wholly or mainly in or from Scotland, suspend any person concerned in its management or control from the exercise of his functions (but not for a period longer than 28 days), and may make provision as respects the period of the suspension for matters arising out of it.
- (3) The Lord Advocate may from time to time nominate officers for the purpose of making inquiries such as are mentioned in subsection (1) above.
- (4) A nominated officer may by notice in writing require any person who he has reason to believe has relevant information to answer questions or otherwise furnish information with respect to any matter relevant to inquiries being made under this section at a specified place and either at a specified time or forthwith.
- (5) A nominated officer may, for the purpose of making inquiries under this section—
  - (a) require any person having in his possession or control any records relating to a body which is the subject of inquiries under this section to furnish him with copies of or extracts from any such records; or



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- (b) unless it forms part of the records of a court or of a public body or local authority, require such a person to transmit the record itself to him for inspection,  
either by a specified time or forthwith.
- (6) If any person fails or refuses to comply with a requirement made under subsection (4) or (5) above, the nominated officer may apply by summary application to the sheriff for an order requiring that person to—
- (a) attend and to answer such questions or to furnish such information at a time and place specified in the order;
  - (b) furnish the nominated officer with copies or extracts of such records as are specified in the order and by such time as is specified in the order;
  - (c) transmit to the nominated officer such records as are specified in the order by such time as is specified in the order,
- and the sheriff shall, if he considers it expedient to do so, make such an order.
- (7) A person shall not be excused from answering such questions as he may be required to answer by virtue of subsection (6) above on the ground that the answer may incriminate or tend to incriminate him, but a statement made by him in answer to any such question shall not be admissible in evidence in any subsequent criminal proceedings against him, except in a prosecution for an offence under section 2 of the <sup>M4</sup>False Oaths (Scotland) Act 1933.
- (8) A person who fails to comply with an order under subsection (6) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) Any person who wilfully alters, suppresses, conceals or destroys any record which he may be required to furnish or transmit under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (10) Subject to subsections (11) and (12) below, there shall be paid to any person who complies with a requirement under subsection (4) or (5) above such expenses as he has reasonably incurred in so complying.
- (11) A nominated officer shall, for the purpose of making inquiries under this section, be entitled without payment to inspect and take copies of or extracts from records in respect of which no requirement can be made under paragraph (b) of subsection (5) above.
- (12) A nominated officer shall, for the purpose of making inquiries under this section, be entitled without payment to keep any copy or extract furnished to him under this section; and where a record transmitted to him for his inspection relates only to one or more recognised body and is not held by any person entitled as trustee or otherwise of such a body to the custody of it, the nominated officer may keep it or may deliver it to the trustees of such a body or to any other person who may be so entitled.
- (13) In this section, “record” means a record held in any medium and includes books, documents, deeds or papers; and, in this Part of this Act—
- “registered charity” means a body which is registered as a charity in England and Wales under section 4 of the <sup>M5</sup>Charities Act 1960; and
  - “non-registered charity” means a charity which, by virtue of sub-section (4) of section 4 of that Act, is not required to register under that section.

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#### Commencement Information

**I6** S. 6 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

#### Marginal Citations

**M4** 1933 c. 20.

**M5** 1960 c. 58.

## 7 Powers of Court of Session to deal with management of charities.

- (1) Where it appears to the court, in the case of a recognised body or a registered, or non-registered, charity which is managed or controlled wholly or mainly in or from Scotland, that—
  - (a) there is or has been any misconduct or mismanagement in its administration; or
  - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes,
 it may, on the application of the Lord Advocate, exercise any of the powers specified in paragraphs (a) to (f) of subsection (4) below.
- (2) Where the court is satisfied, in the case of such a body as is mentioned in subsection (1) above, that—
  - (a) there is or has been any misconduct or mismanagement in its administration; and
  - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes,
 it may, on the application of the Lord Advocate, exercise any of the powers specified in paragraphs (f) to (j) of subsection (4) below.
- (3) Where the court is satisfied that a non-recognised body—
  - (a) represents itself or holds itself out as a charity; and
  - (b) is established under the law of Scotland or is managed or controlled wholly or mainly in or from Scotland or has moveable or immoveable property situated in Scotland,
 it may, on the application of the Lord Advocate, exercise any of the powers specified in subsection (4) below.
- (4) The powers which may be exercised under this subsection by the court are—
  - (a) to interdict *interim* the body from representing itself or holding itself out as a charity or from such other action as the court, on the application of the Lord Advocate, thinks fit;
  - (b) to suspend any person concerned in the management or control of the body;
  - (c) to appoint *interim* a judicial factor to manage the affairs of the body;
  - (d) to make an order requiring any bank or other person holding money or securities on behalf of the body or of any person concerned in its control and management not to part with the money or securities without the court's approval;
  - (e) to make an order, notwithstanding anything in the trust deed or other document constituting the body, restricting the transactions which may be entered

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- into, or the nature or amount of the payments which may be made, in the administration of the body without the approval of the court;
- (f) to appoint a trustee, and section 22 of the <sup>M6</sup>Trusts (Scotland) Act 1921 shall apply to such a trustee as if he had been appointed under that section;
  - (g) to interdict the body from representing itself or holding itself out as a charity or from such other action as the court, on the application of the Lord Advocate, thinks fit;
  - (h) to remove any person concerned in the management or control of the body;
  - (j) to appoint a judicial factor to manage the affairs of the body.
- (5) Where the court is satisfied, in the case of such a body as is mentioned in subsection (1) above, that—
- (a) there has been in its administration any misconduct or mismanagement;
  - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes;
  - (c) it is not practicable nor in the best interests of the body to retain its existing administrative structure and, if appropriate, trustee body; and
  - (d) in its opinion, the body's purpose would be achieved better by transferring its assets to another such body,
- or where the court is satisfied as mentioned in subsection (3) above in the case of a non-recognised body, it may approve a scheme, presented to it by the Lord Advocate and prepared by him in accordance with regulations made by the Secretary of State, for the transfer of any assets of the body to such body as the Lord Advocate specifies in the scheme, being a recognised body or a registered, or non-registered, charity which is managed or controlled wholly or mainly in or from Scotland.
- (6) In the case of a registered, or non-registered, charity which is managed or controlled wholly or mainly outside Scotland but on behalf of which a bank or other person in Scotland holds moveable property, the court may, on the application of the Lord Advocate acting on information received from the Charity Commissioners for England and Wales, make an order requiring the bank or person not to part with that property without the court's approval and such an order shall be subject to such conditions as the court thinks fit.
- (7) Where the court has made an order under subsection (6) above and is satisfied, in the case of such a charity, that—
- (a) there has been in its administration any misconduct or mismanagement; and
  - (b) it is necessary or desirable to act for the purpose of protecting its property or securing a proper application of such property for its purposes,
- it may, on the further application of the Lord Advocate, make an order confirming the order made under subsection (6) above and such an order shall be subject to such conditions as the court thinks fit.
- (8) Where the court has made an order under subsection (6) above and it is satisfied as to the matters specified in subsection (7) above in respect of such a charity, if in its opinion the moveable property would not be applied for the purposes of the charity, it may, on the further application of the Lord Advocate, transfer that property to such body as the Lord Advocate specifies in the application, being a body—
- (a) which is a recognised body or registered, or non-registered, charity the purposes of which closely resemble the purpose of the charity whose moveable property is transferred; and
  - (b) which has intimated that it will receive that property.

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- (9) The court shall have power—
- (a) to vary or recall an order made under paragraph (d) or (e) of subsection (4) above or under subsection (6) or (7) above;
  - (b) to recall the suspension of a person under paragraph (b) of subsection (4) above
  - (c) to approve a scheme under subsection (5) above subject to such modifications as it thinks fit;
  - (d) subject to subsection (10) below, to award expenses as it thinks fit in any proceedings before it under this section.
- (10) In a case where, but for the provisions of this subsection, the court would have awarded expenses against the body which is the subject of the proceedings, the court—
- (a) shall have regard to the desirability of applying the property of the body for the charitable purposes of that body, or the charitable purposes which are purported to be the purposes of that body, and
  - (b) may award expenses against a person concerned in the control or management of the body, or against any such persons jointly and severally.
- (11) Where the court exercises in respect of a recognised body any power specified in subsection (4) or (5) above, the Lord Advocate may require that exercise to be noted for the purposes of section 1(3) of this Act.
- (12) In this section “the court” means the Court of Session.

#### Commencement Information

**I7** S. 7 wholly in force; s. 7(5) in force for certain purposes at 4.7.1992 and s. 7 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

#### Marginal Citations

**M6** 1921 c. 58.

## 8 Disqualification of persons concerned in the management or control of recognised bodies.

- (1) A person who—
- (a) has been convicted of an offence involving dishonesty;
  - (b) is an undischarged bankrupt;
  - (c) has been removed, under section 7 of this Act, from being concerned in the management or control of any body; or
  - (d) is subject to a disqualification order [<sup>F1</sup>or disqualification undertaking] under the <sup>M7</sup>Company Directors Disqualification Act 1986 [<sup>F1</sup>or to a disqualification order under Part II of the <sup>M8</sup>Companies (Northern Ireland) Order 1989],
- shall, subject to the provisions of this section, be disqualified from being concerned with the management or control of a recognised body.
- (2) A person shall not be disqualified under subsection (1) above if—
- (a) the conviction mentioned in that subsection is spent by virtue of the <sup>M9</sup>Rehabilitation of Offenders Act 1974; or

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- (b) the Lord Advocate has thought fit to grant in writing a waiver of that disqualification in respect of that person,
- but the Lord Advocate shall not grant a waiver where to do so would prejudice the operation of the <sup>M10</sup>Company Directors Disqualification Act 1986.
- (3) A person who is concerned with the management or control of a recognised body whilst disqualified by virtue of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (4) The acts, in relation to the management or control of such a body, of such a person as is mentioned in subsection (1) above shall not be invalid only by reason of his disqualification under that subsection.
- (5) Proceedings for an offence under subsection (3) above shall not be commenced after the end of the period of 3 years beginning with the day on which the offence was committed but, subject to that, may be commenced at any time within 6 months from the date on which evidence sufficient in the opinion of the procurator fiscal to warrant proceedings came to his knowledge; and a certificate of the procurator fiscal as to the date on which such evidence came to his knowledge shall be conclusive evidence of that fact.
- (6) In this section, “undischarged bankrupt” means a person who has had his estate sequestrated, been adjudged bankrupt or has granted a trust deed for or entered into an arrangement with his creditors and has not been discharged under or by virtue of—
- (a) section 54 or section 75(4) of the <sup>M11</sup>Bankruptcy (Scotland) Act 1985;
- (b) an order under paragraph 11 of Schedule 4 to that Act of 1985;
- (c) section 279 or section 280 of the <sup>M12</sup>Insolvency Act 1986; or
- (d) any other enactment or rule of law subsisting at the time of his discharge

#### Textual Amendments

- F1** Words in s. 8(1)(d) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 17(a)(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to **art. 3**)

#### Commencement Information

- I8** S. 8 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art. 5, **Sch. 3**.

#### Marginal Citations

- M7** 1986 c. 46.  
**M8** S.I. 1989/2404 (N.I. 18).  
**M9** 1974 c. 53.  
**M10** 1986 c. 46.  
**M11** 1985 c. 66.  
**M12** 1986 c. 45.

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## *Reorganisation of public trusts*

### **9 Reorganisation of public trusts by the court.**

- (1) Where, in the case of any public trust, the court is satisfied—
- (a) that the purposes of the trust, whether in whole or in part—
    - (i) have been fulfilled as far as it is possible to do so; or
    - (ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
  - (b) that the purposes of the trust provide a use for only part of the property available under the trust;
  - (c) that the purposes of the trust were expressed by reference to—
    - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
    - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
  - (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
    - (i) been adequately provided for by other means; or
    - (ii) ceased to be such as would enable the trust to become a recognised body; or
    - (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust,
- the court, on the application of the trustees, may, subject to subsection (2) below, approve a scheme for the variation or reorganisation of the trust purposes.
- (2) The court shall not approve a scheme as mentioned in subsection (1) above unless it is satisfied that the trust purposes proposed in the scheme will enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust, having regard to changes in social and economic conditions since the time when the trust was constituted.
- (3) Where any of paragraphs (a) to (d) of subsection (1) above applies to a public trust, an application may be made under this section for the approval of a scheme —
- (a) for the transfer of the assets of the trust to another public trust, whether involving a change to the trust purposes of such other trust or not; or
  - (b) for the amalgamation of the trust with one or more public trusts,
- and the court, if it is satisfied that the conditions specified in subsection (2) above are met, may approve such a scheme.
- (4) Subject to subsection (5) below, an application for approval of a scheme under this section shall be made to the Court of Session.
- (5) From such day as the Lord Advocate may, by order, appoint, an application for approval of a scheme under this section may be made by a public trust having an

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annual income not exceeding such amount as the Secretary of State may, by order, prescribe—

- (a) to the sheriff for the place with which the trust has its closest and most real connection;
  - (b) where there is no such place as is mentioned in paragraph (a) above, to the sheriff for the place where any of the trustees resides;
  - (c) where neither paragraph (a) nor (b) above applies, to the sheriff of Lothian and Borders at Edinburgh.
- (6) Every application under this section shall be intimated to the Lord Advocate who shall be entitled to enter appearance as a party in any proceedings on such application, and he may lead such proof and enter such pleas as he thinks fit; and no expenses shall be claimable by or against the Lord Advocate in any proceedings in which he has entered appearance under this subsection.
- (7) This section shall be without prejudice to the power of the Court of Session to approve a cy pres scheme in relation to any public trust.

#### Commencement Information

**19** S. 9 wholly in force; s. 9(5) in force for certain purposes at 4.7.1992 and s. 9 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

## 10 Small trusts.

- (1) Where a majority of the trustees of any public trust having an annual income not exceeding £5,000 are of the opinion—
- (a) that the purposes of the trust, whether in whole or in part—
    - (i) have been fulfilled as far as it is possible to do so; or
    - (ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
  - (b) that the purposes of the trust provide a use for only part of the property available under the trust;
  - (c) that the purposes of the trust were expressed by reference to—
    - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
    - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
  - (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
    - (i) been adequately provided for by other means; or
    - (ii) ceased to be such as would enable the trust to become a recognised body; or
    - (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust,

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subsection (2) below shall apply in respect of the trust.

- (2) Where this subsection applies in respect of a trust, the trustees may determine that, to enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust—
  - (a) a modification of the trust’s purposes should be made;
  - (b) the whole assets of the trust should be transferred to another public trust; or
  - (c) that the trust should be amalgamated with one or more public trusts.
- (3) Where the trustees of a trust determine as mentioned in subsection (2)(a) above, they may, subject to subsections (4) to (6) below, pass a resolution that the trust deed be modified by replacing the trust purposes by other purposes specified in the resolution.
- (4) The trustees shall ensure that, so far as is practicable in the circumstances, the purposes so specified are not so far dissimilar in character to those of the purposes set out in the original trust deed or other document constituting the trust that such modification of the trust deed would constitute an unreasonable departure from the spirit of such trust deed or other document.
- (5) Before passing a resolution under subsection (3) above the trustees shall have regard—
  - (a) where the trust purposes relate to a particular locality, to the circumstances of the locality; and
  - (b) to the extent to which it may be desirable to achieve economy by amalgamating two or more trusts.
- (6) As regards a trust which is a recognised body, the trustees shall ensure that the purposes specified as mentioned in subsection (3) above are such as will enable the trust to continue to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the <sup>M13</sup>Income and Corporation Taxes Act 1988 (exemption from tax for charities).
- (7) Subject to subsection (14) below, a modification of trust purposes under this section shall not have effect before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (8) Where the trustees determine as mentioned in subsection (2)(b) above they may pass a resolution that the trust be wound up and that the assets of the trust be transferred to another trust or trusts the purposes of which are not so dissimilar in character to those of the trust to be wound up as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the trust to be wound up.
- (9) Before passing a resolution under subsection (8) above, the trustees shall—
  - (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
  - (b) where the trust is a recognised body, ensure that the purposes of the trust to which it is proposed that the assets be transferred are such as will enable the trust to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the Income and Corporation Taxes Act 1988 (exemption from tax for charities); and
  - (c) ascertain that the trustees of the trust to which it is proposed to transfer the assets will consent to the transfer of the assets.



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- (10) Where the trustees determine as mentioned in subsection (2)(c) above, they may pass a resolution that the trust be amalgamated with one or more other trusts so that the purposes of the trust constituted by such amalgamation will not be so dissimilar in character to those of the trust to which the resolution relates as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the last mentioned trust.
- (11) Before passing a resolution under subsection (10) above, the trustees shall—
- (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
  - (b) where any of the trusts to be amalgamated is a recognised body, ensure that the trust purposes of the trust to be constituted by such amalgamation will be such as to enable it to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the <sup>M14</sup>Income and Corporation Taxes Act 1988 (exemption from tax for charities); and
  - (c) ascertain that the trustees of any other trust with which it is proposed that the trust will be amalgamated will agree to such amalgamation.
- (12) Subject to subsection (14) below, a transfer of trust assets or an amalgamation of two or more trusts under this section shall not be effected before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (13) The Secretary of State may, by regulations, prescribe the procedure to be followed by trustees following upon a resolution passed under subsection (3), (8) or (10) above, and such regulations may, without prejudice to the generality, include provision as to advertisement of the proposed modification or winding up, the making of objections by persons with an interest in the purposes of the trust, notification to the Lord Advocate of the terms of the resolution and the time within which anything requires to be done.
- (14) If it appears to the Lord Advocate, whether in consideration of any objections made in pursuance of regulations made under subsection (13) above or otherwise—
- (a) that the trust deed should not be modified as mentioned in subsection (3) above;
  - (b) that the trust should not be wound up as mentioned in subsection (8) above; or
  - (c) that the trust should not be amalgamated as mentioned in subsection (10) above,
- he may direct the trust not to proceed with the modification or, as the case may be winding up and transfer of funds or amalgamation.
- (15) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.
- (16) This section shall apply to any trust to which section 223 of the <sup>M15</sup>Local Government (Scotland) Act 1973 (property held on trust by local authorities) applies.

#### Marginal Citations

**M13** 1988 c. 1.

**M14** 1988 c. 1.

**M15** 1973 c. 65.

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## 11 Expenditure of capital.

- (1) This section applies to any public trust which has an annual income not exceeding £1,000 where the trust deed or other document constituting the trust prohibits the expenditure of any of the trust capital.
- (2) In the case of any trust to which this section applies where the trustees—
  - (a) have resolved unanimously that, having regard to the purposes of the trust, the income of the trust is too small to enable the purposes of the trust to be achieved; and
  - (b) are satisfied that either there is no reasonable prospect of effecting a transfer of the trust's assets under section 10 of this Act or that the expenditure of capital is more likely to achieve the purposes of the trust,
 they may, subject to subsection (3) below, proceed with the expenditure of capital.
- (3) Not less than two months before proceeding to expend capital, the trustees shall advertise their intention to do so in accordance with regulations made by the Secretary of State and shall notify the Lord Advocate of such intention.
- (4) If it appears to the Lord Advocate that there are insufficient grounds for the expenditure of capital he may apply to the court for an order prohibiting such expenditure, and if the court is satisfied that there are such insufficient grounds it may grant the order.
- (5) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.

### *Dormant charities*

## 12 Dormant accounts of charities in banks, etc.

- (1) The Secretary of State may appoint a person to be the Scottish charities nominee (in this section referred to as “the nominee”) who shall have the functions conferred by this section.
- (2) Where the nominee receives from a relevant institution the following information—
  - (a) that every account held by the institution in the name of or on behalf of a named body is dormant; and
  - (b) the amount of the balance standing to the credit of the body in each such account,
 and he is satisfied that the body is a recognised body, subsection (3) or, as the case may be, subsection (5) below shall apply as regards the body and such accounts.
- (3) Where the aggregate amount standing to the credit of the body in such accounts as are mentioned in subsection (2) above does not exceed £5,000, unless it appears to the nominee—
  - (a) that a person is concerned in the management or control of the body; or
  - (b) that there are circumstances relating to the body which would make it inappropriate to do so,
 he shall transfer the balance standing to the credit of the body in such accounts to such other recognised body as he may determine, having regard to the purposes of the body in whose name or on whose behalf the accounts are held and those of the body to which it is proposed to transfer the funds; and the body to which the funds

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are transferred under this subsection or subsection (4) below shall be entitled to apply such funds for its purposes as it thinks fit.

- (4) Where, in the case of a body to which subsection (3) above applies, the nominee is unable to ascertain the purposes of the body in whose name or on whose behalf such accounts are held, he shall transfer the balance standing in the name of the body concerned to such other recognised body as appears to him expedient.
- (5) Where the aggregate amount standing to the credit of the body in such accounts as are mentioned in subsection (2) above exceeds £5,000 or in any case to which paragraphs (a) or (b) of subsection (3) above applies, the nominee shall advise the Lord Advocate of the information received by him in respect of the body and of any other matter which appears to him to be relevant in the circumstances.
- (6) Where the Lord Advocate receives information in pursuance of subsection (5) above he shall inform the nominee—
  - (a) in the case of a body which is a trust, whether he intends to exercise his power under section 13(2) of this Act to appoint new trustees to the body; or
  - (b) in any case, if he intends to apply to the Court of Session for the appointment of an interim judicial factor under section 7(4)(c) of this Act,but if the Lord Advocate informs the nominee that he does not intend to proceed under either paragraph (a) or (b) above, subsection (3) above shall apply as regards the body and such accounts as are mentioned in subsection (2) above as if the aggregate amount of the balance referred to in subsection (3) did not exceed £5,000 and neither paragraph (a) nor (b) of that subsection applied.
- (7) Notwithstanding anything in any enactment or rule of law to the contrary, the nominee shall, by virtue of this subsection, have the right to effect any transaction (including a transaction closing the account) in relation to any account to which subsection (3) above applies; and the receipt of the nominee in respect of any funds withdrawn or transferred from an account by virtue of this subsection shall, as regards the interest of the nominee in respect of such funds, be a full and valid discharge to the relevant institution holding the account.
- (8) No liability (other than liability for a criminal offence) shall attach to the nominee in consequence of any act or omission of his in the performance of his functions under this section.
- (9) The power of the nominee to effect transactions in relation to the accounts of a body shall cease to have effect—
  - (a) when the Lord Advocate notifies him of his intention to proceed under subsection (6) above;
  - (b) if the relevant institution by which the accounts are held notifies the nominee that the accounts held by or on behalf of the body are no longer dormant; or
  - (c) where the nominee becomes aware of the identity of a person concerned in the management or control of the body, when he informs the institution of that fact,and in any case to which paragraph (c) above applies, the nominee shall also inform the Lord Advocate of that fact.
- (10) The Secretary of State may, by regulations made under this section—
  - (a) make provision as to the procedure to be followed by the nominee in exercising his powers under this section;

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- (b) require the nominee to make to the Secretary of State an annual report as regards the exercise of his functions and such regulations may specify the form and content of such report; and the Secretary of State shall lay a copy of such report before each House of Parliament;
  - (c) prescribe the circumstances in which and the extent to which the nominee may apply any interest accruing to any account as regards which subsection (3) above applies during any period for which he is entitled to effect transactions in respect of the account for the purpose of defraying his expenses in connection with the exercise of his functions under this section;
  - (d) require the nominee to keep accounts as regards his outlays and expenses in connection with the exercise of his functions under this section; and
  - (e) amend subsections (3) and (5) above by substituting a different figure for the figure for the time being mentioned in those subsections.
- (11) Where every account held by or on behalf of a body which appears to a relevant institution to be a recognised body is a dormant account, no obligation of confidentiality or requirement of secrecy (whether imposed by any enactment or rule of law or otherwise) shall prevent the institution from supplying to the nominee information such as is mentioned in subsection (12) below.
- (12) Information referred to in subsection (11) above is information relating to any account such as is mentioned in that subsection which consists of any of the following—
- (a) the amount of the balance of the account as at the date the information is supplied;
  - (b) the last date on which a transaction (other than a transaction consisting only of the accrual of interest to the account) was effected in relation to the account;
  - (c) so far as is known to the institution, the terms of the trust deed or other document constituting the body or any information as to the nature of the purposes of the body.
- (13) For the purpose of this section—
- [<sup>F2</sup>(a) a “relevant institution” is—
    - (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
    - (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
    - (iii) such other person or class of persons as the Secretary of State may by regulations made under this section, prescribe;]
  - (b) an account is dormant if—
    - (i) in the period of ten years preceding the date on which the institution reviews the account, no transaction (other than a transaction consisting only of the accrual of interest to the account) has taken place in respect of the account; and
    - (ii) the institution has no knowledge of the identity of any person concerned in the management or control of the body in whose name or on whose behalf the account is held.

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### Textual Amendments

**F2** S. 12(13)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 231

## Miscellaneous

### <sup>F3</sup>13 Appointment of trustees.

- (1) Where a recognised body is a trust, notwithstanding anything to the contrary in the trust deed or other document constituting the trust, the trustees shall have power to appoint such number of additional trustees as will secure that, at any time, the number of trustees shall be not less than three.
- (2) Where in the case of any trust which is a recognised body—
  - (a) the number of trustees is less than three; and
  - (b) it appears to the Lord Advocate that the trustees will not, or are unable to, exercise their power under subsection (1) above,
 if it appears to the Lord Advocate expedient to do so, he may exercise the power in place of the trustees.

### Textual Amendments

**F3** S. 13 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

### 14 Alteration of purposes and winding-up of charitable companies.

- (1) This section applies to a recognised body which may be wound up by the Court of Session under or by virtue of Parts IV or V of the <sup>M16</sup>Insolvency Act 1986.
- (2) Where a body to which this section applies has power to alter the instruments establishing or regulating it, it shall not alter any charitable purposes in those instruments except in such a way as will enable the body to continue to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the <sup>M17</sup>Income and Corporation Taxes Act 1988 (exemption from tax of charities).
- (3) Notwithstanding section 124 of the <sup>M18</sup>Insolvency Act 1986, a petition for the winding-up under section 122 of that Act of a body to which this section applies may be presented by the Lord Advocate to any court in Scotland having jurisdiction.

### Commencement Information

**I10** S. 14 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, art.5, Sch. 3.

### Marginal Citations

**M16** 1986 c. 45.

**M17** 1988 c. 1.

**M18** 1986 c. 45.

*Status:* Point in time view as at 01/12/2001. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 is up to date with all changes known to be in force on or before 07 July 2023. 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)

## *Interpretation*

### **15 Interpretation of Part I, regulations and orders.**

(1) In this Part of this Act—

“annual income” in relation to a recognised body means the income of the body for the financial year to which its most recent statement of accounts relates;

“accounting reference period”, “accounting reference date” and “financial year” shall be construed in accordance with subsections (2) to (7) below;

“body” includes the sole trustee of any trust and, as regards any reference in this Part of this Act to the institution of proceedings in any court or to any order of a court in relation to an unincorporated body, shall be construed—

- (a) in the case of a trust, as a reference to the trustees acting in their capacity as such;
- (b) in any other case, as a reference to the persons concerned in the management or control of the body;

“court”, for the purposes of establishing jurisdiction to hear or determine any matter other than under sections 7 and 9 of this Act, means the Court of Session or the sheriff court;

“non-recognised body” shall be construed in accordance with section 2 of this Act;

“non-registered charity” has the meaning given by section 6 of this Act;

“recognised body” has the meaning given by section 1 of this Act; and

“registered charity” has the meaning given by section 6 of this Act.

- (2) For the purposes of this Part of this Act, a recognised body’s first financial year begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than 7 days before or after the end of that period, as the persons concerned with the management or control of the body may determine.
- (3) Subject to subsection (4) below, subsequent financial years begin with the day immediately following the end of the body’s previous financial year and end with the last day of its next accounting reference period or such other date, not more than 7 days before or after the end of that period as the persons responsible for its management or control may determine.
- (4) A recognised body’s accounting reference periods are determined according to its accounting reference date.
- (5) A recognised body’s accounting reference date is the date upon which its accounting reference period ends in each calendar year and it shall be ascertained as follows—
  - (a) in the case of a body which is recognised at the commencement of this section and in respect of which accounts have been prepared up to a date not more than 12 months before such commencement, its accounting reference date shall be that date;
  - (b) in the case of a body which is recognised at the commencement of this section and in respect of which no such accounts have been prepared, its accounting reference date shall be 31 March or such other date as the Secretary of State may, by order, prescribe;

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- (c) in the case of a body which is not recognised at the commencement of this section and in respect of which accounts have been prepared up to a date not more than 12 months before its recognition, its accounting reference date shall be that date; and
  - (d) a body which is not recognised at the commencement of this section and in respect of which no accounts have been prepared up to a date not more than 12 months before such commencement, unless it determines that its accounting reference date shall be 31 March or such other date as the Secretary of State may, by order, prescribe, shall by notice given to the Lord Advocate specify its accounting reference date.
- (6) A recognised body's first accounting reference period is—
- (a) in the case of a body which is recognised at the commencement of this section and in respect of which any accounts have been prepared for a period up to a date not more than 12 months before such commencement, the period beginning with that date;
  - (b) in the case of a body which is recognised at such commencement and in respect of which no such accounts have been prepared, the period beginning with such commencement;
  - (c) in the case of any other body, the period of more than 6 months, but not more than 18 months, beginning with the date from which its recognition takes effect and ending with its accounting reference date.
- (7) Its subsequent accounting reference periods are successive periods of 12 months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.
- (8) A recognised body may, on giving not less than one month's notice of its intention to do so to the Lord Advocate, unless the Lord Advocate notifies the body that he objects to the proposal, specify a new accounting reference date having effect in relation to the body's current accounting reference period and subsequent periods.
- (9) Nothing in this Part of this Act, except section 1, shall affect any educational endowment within the meaning of section 122(1) of the <sup>M19</sup>Education (Scotland) Act 1980.
- (10) The <sup>M20</sup>War Charities Act 1940 shall cease to have effect as regards Scotland; but nothing in this subsection shall affect any prosecution for an offence under that Act which has been instituted before the commencement of this section.
- (11) Any power in this Part of this Act of the Secretary of State to make regulations or orders shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I11** S. 15 wholly in force; s. 15(11) in force and s. 15(5)(b)(d) in force for certain purposes at 4.7.1992, s. 15 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

#### Marginal Citations

**M19** 1980 c. 44.

**M20** 1940 c. 31.

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## PART II

### LEGAL SERVICES

#### *Conveyancing and executry services*

#### **16 The Scottish Conveyancing and Executry Services Board.**

- (1) There shall be a Board, to be known as the Scottish Conveyancing and Executry Services Board, which shall have the principal functions of regulating—
  - (a) the provision of conveyancing services by persons other than—
    - (i) solicitors; and
    - (ii) persons mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate and confirmations); and
  - (b) the provision of executry services by persons other than—
    - (i) solicitors;
    - (ii) persons referred to in paragraph (a)(ii) above; and
    - (iii) recognised financial institutions.
- (2) The Secretary of State may <sup>F4</sup> . . . make grants to the Board towards expenses incurred, or to be incurred, by them in connection with—
  - (a) the initial establishment of the Board; and
  - (b) the discharge by the Board of their functions.
- (3) Any grant made under subsection (2) above may be made subject to such terms and conditions (including conditions as to repayment) as the Secretary of State <sup>F4</sup> . . . thinks fit and the Secretary of State may <sup>F4</sup> . . . , vary such terms and conditions after the grant is made.
- (4) Part I of Schedule 1 to this Act (constitution, duties, powers and status of the Board) shall have effect in relation to the Board.

#### **Textual Amendments**

**F4** Words in s. 16(2)(3) repealed (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 101(2), Pt. IV

#### **Commencement Information**

**I12** S. 16 wholly in force at 1.4.1991. See s. 75(2) and S.I. 1991/822, art. 3, Schedule.

#### **17 Qualified conveyancers.**

- (1) The Board shall establish and maintain a register of qualified conveyancers, which shall be available for inspection by any person without charge.
- (2) Where, on an application made to them by a natural person in such form as they may determine, and on the provision of such information in connection with the application as they consider necessary, the Board are satisfied that the applicant—
  - (a) is a fit and proper person to provide conveyancing services as a qualified conveyancer; and
  - (b) complies with the requirements of rules made under subsection (3) below,



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the Board shall grant the application and shall enter the applicant's name in the register of qualified conveyancers.

- (3) The Board shall, subject to subsection (15) below and after such consultation as they consider appropriate, make rules as to the requirements to be satisfied by any person applying for registration under subsection (2) above, and such rules shall, in particular, make provision as to—
  - (a) educational qualifications; and
  - (b) practical training.
- (4) Where the Board refuse an application under subsection (2) above they shall give the applicant written reasons for their decision.
- (5) Where the Board refuse an application under subsection (2) above the applicant may, within 21 days of the date on which the Board's decision is intimated to him, apply to the Board to review their decision.
- (6) Where the Board have reviewed a decision mentioned in subsection (5) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to him, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (7) Where a qualified conveyancer informs the Board that he intends to provide conveyancing services to the public for a fee, gain or reward and—
  - (a) satisfies the Board that he has made adequate arrangements for the satisfaction of any successful claims against him arising out of such provision by him of such services; or
  - (b) participates in the arrangements made by the Board for that purpose under subsection (13)(b) below,

the Board shall make an annotation on the register against his name to the effect that he is an independent qualified conveyancer; and where he subsequently informs them that he intends to cease providing such services to the public for a fee, gain or reward, they shall remove that annotation.

- (8) Any person or body other than—
  - (a) an independent qualified conveyancer; or
  - (b) a solicitor; or
  - (c) an incorporated practice within the meaning of section 65 of the 1980 Act (interpretation); or
  - (d) a multi-disciplinary practice within the meaning of that section,who employs a qualified conveyancer under a contract of employment for the purpose of providing conveyancing services for persons other than himself or, as the case may be, themselves, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) Where a qualified conveyancer applies to the Board to remove his name from the register the Board shall—
  - (a) where, in the case of an independent qualified conveyancer, they are satisfied that he has made adequate arrangements with respect to the business he then has in hand; and
  - (b) in any other case, without further enquiry,grant the application and amend the register accordingly.

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- (10) The Board shall send to the Keeper of the Registers of Scotland—
- (a) as soon as practicable after 1st April in each year, a list of all qualified conveyancers; and
  - (b) written notice of any subsequent change to the register of qualified conveyancers.
- (11) The Secretary of State shall, subject to section 40 of this Act and after consultation with such persons as he considers appropriate, by regulations make such provision as he thinks fit with a view to maintaining appropriate standards of conduct and practice of independent qualified conveyancers, and such regulations shall, in particular, make provision with respect to—
- (a) the manner in which such conveyancers conduct the provision of conveyancing services;
  - (b) conflicts of interest;
  - (c) the contractual obligations of such conveyancers;
  - (d) the holding of clients' money; and
  - (e) the disclosure of and accounting for commissions.
- (12) Regulations under subsection (11) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (13) The Board shall, in relation to the provision of conveyancing services by independent qualified conveyancers, and subject to subsection (14) below—
- (a) establish and maintain suitable procedures for dealing with any complaints made to them in connection with the provision of conveyancing services by such conveyancers; and
  - (b) make suitable arrangements (whether by means of insurance policies or otherwise) to secure that any successful claims made against such a conveyancer in connection with the provision of conveyancing services are satisfied.
- (14) Before establishing procedures or making arrangements under subsection (13)(a) or, as the case may be, (b) above, the Board shall submit particulars of the proposed procedures or arrangements to the Secretary of State for his approval.
- (15) Before making any rules under subsection (3) above, the Board shall submit the rules to the Secretary of State for his approval, and before approving any such rules the Secretary of State shall consult—
- (a) the Director in accordance with section 40 of this Act; and
  - (b) such other persons as he considers appropriate.
- (16) It shall be the duty of—
- (a) an independent qualified conveyancer to comply with the requirements of regulations made under subsection (11) above and any direction of the Board under section 20(2)(a) or (b) of this Act; and
  - (b) the Board to ensure such compliance.
- (17) Where, under or by virtue of any enactment—
- (a) a warrant of registration is required for recording any deed in the General Register of Sasines; or

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- (b) an application for registration is required for registering an interest in land in the Land Register of Scotland,
- any reference in that or any other enactment or any subordinate instrument to such a warrant or application being signed by a solicitor or agent shall be construed as including a reference to the warrant or application being signed by a qualified conveyancer, and any enactment or subordinate instrument making provision as to the form of such a warrant or application shall, with the necessary modifications, apply in relation to a qualified conveyancer.
- (18) A qualified conveyancer who signs a warrant or application by virtue of subsection (17) above shall, in addition to any matters required to be specified after his signature by any enactment or subordinate instrument, specify the independent qualified conveyancer, solicitor or incorporated practice by whom he is employed or, where he is himself an independent qualified conveyancer, his designation as such.
- (19) Any person who—
- (a) wilfully and falsely—
    - (i) pretends to be a qualified conveyancer; or
    - (ii) takes or uses any name, title, addition or description implying that he is a qualified conveyancer; or
  - (b) being a qualified conveyancer, provides conveyancing services at a time when his registration as such is suspended,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (20) Any qualified conveyancer not registered as an independent qualified conveyancer under subsection (7) above who—
- (a) wilfully and falsely—
    - (i) pretends to be an independent qualified conveyancer; or
    - (ii) takes or uses any name, title, addition or description implying that he is an independent qualified conveyancer; or
  - (b) provides conveyancing services to the public for a fee, gain or reward,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (21) Where an offence under subsection (19)(a) above is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (22) Where an offence under subsection (19)(a) above is committed by a partnership and is proved to have been committed with the consent or connivance of a partner, he (as well as the partnership) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (23) Any independent qualified conveyancer who provides conveyancing services upon the account of, or for the profit of, any person other than—
- (a) a solicitor;
  - (b) an incorporated practice within the meaning of section 65 of the 1980 Act;

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- (c) a multi-disciplinary practice within the meaning of that section; or
- (d) another independent qualified conveyancer,

knowing that person not to be a solicitor, incorporated practice, multi-disciplinary practice or independent qualified conveyancer, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (24) Any rule imposed by any professional or other body which purports to prevent a solicitor or any person mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate etc.) from—
- (a) acting as an employee of an independent qualified conveyancer in connection with the provision of conveyancing services; or
  - (b) acting on behalf of an independent qualified conveyancer in connection with the provision of such services,
- shall be of no effect.

#### Commencement Information

**I13** s. 17 wholly in force at 1.3.1997; s. 17 not in force at Royal Assent see s. 75(2); s. 17(3)(11)-(15) in force at 30.9.1991 by [S.I. 1991/2151](#), [art. 3](#), Sch.; s. 17 in force at 1.3.1997 in so far as not already in force by [S.I. 1996/2894](#), [art. 3](#), [Sch](#) (as amended by [S.I. 1996/2966](#), [art. 2](#))

## 18 Executry practitioners.

- (1) The Board shall establish and maintain a register of executry practitioners, which shall be available for inspection by any person without charge.
- (2) Where, on an application made to them in such form as they may determine, the Board are satisfied that the applicant fulfils the conditions specified in subsection (3) below, the Board shall grant the application and shall enter the applicant's name in the register of executry practitioners.
- (3) The conditions referred to in subsection (2) above are that the applicant—
  - (a) is a fit and proper person to provide executry services;
  - (b) complies with the requirements prescribed by regulations made under subsection (10) below; and
  - (c) maintains suitable arrangements (whether by means of insurance policies or otherwise) to satisfy any successful claims made against it in connection with the provision of executry services.
- (4) The Board may require an applicant under subsection (2) above to provide such further information in connection with the application as they consider necessary.
- (5) Where the Board—
  - (a) grant an application under subsection (2) above, they may attach such conditions as they may determine, and shall record any such conditions against the applicant's name in the register;
  - (b) refuse such an application, they shall give the applicant written reasons for their decision.
- (6) Where the Board—
  - (a) grant an application under subsection (2) above subject to conditions; or

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- (b) refuse such an application,  
the applicant may, within 21 days of the date on which the Board's decision is intimated to it, apply to the Board to review their decision.
- (7) Where the Board have reviewed a decision mentioned in subsection (6) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to it, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (8) Where an executry practitioner applies to the Board to remove its name from the register the Board shall, if they are satisfied that the practitioner has made adequate arrangements with respect to the business it then has in hand, grant the application and amend the register accordingly.
- (9) The Board shall send to the Keeper of the Registers of Scotland and to each sheriff clerk—
- (a) as soon as practicable after 1st April in each year, a list of all executry practitioners; and
  - (b) written notice of any subsequent change to the register of executry practitioners.
- (10) The Secretary of State shall, subject to section 40 of this Act and after consultation with such persons as he considers appropriate, by regulations make such provision as he thinks fit with a view to maintaining appropriate standards of conduct and practice of executry practitioners and such regulations shall, in particular, make provision as to educational qualifications and practical training.
- (11) Regulations under subsection (10) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (12) It shall be the duty of—
- (a) an executry practitioner to comply with the requirements of regulations made under subsection (10) above and any direction of the Board under section 20(2)(a) or (b) of this Act; and
  - (b) the Board to ensure such compliance.
- (13) Any person who—
- (a) wilfully and falsely—
    - (i) pretends to be an executry practitioner; or
    - (ii) takes or uses any name, title, addition or description implying that he is an executry practitioner; or
  - (b) being an executry practitioner, provides executry services at a time when his registration as such is suspended,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (14) Where an offence under subsection (13) above is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,

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he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- (15) Where an offence under subsection (13) above is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the consent or connivance of a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### Commencement Information

- I14** S. 18 wholly in force 1.3.1997; s. 18 not in force at Royal Assent see s. 75(2); s. 18(10)-(11) in force at 30.9.1991 by [S.I. 1991/2151](#), [art. 3](#), Sch.; s. 18 in force at 1.3.1997 in so far as not already in force by [S.I. 1996/2894](#) art. 3, Sch. (as amended by [S.I. 1996/2966](#), [art. 2](#))

PROSPECTIVE

#### <sup>F5</sup>19 Executry services by recognised financial institutions.

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#### Textual Amendments

- F5** [S. 19](#) repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), [Sch. 4 para. 12\(5\)](#); [S.S.I. 2003/384](#), art. 2(d)

#### 20 Professional misconduct, inadequate professional services, etc.

- (1) Where, after such inquiry as they consider appropriate (whether or not following a complaint to them) and after giving the practitioner concerned an opportunity to make representations, the Board are satisfied that a practitioner—

- (a) is guilty of professional misconduct;
- (b) has provided inadequate professional services;
- (c) has failed to comply with regulations made under section 17(11) or 18(10) of this Act; or
- (d) has been convicted of a criminal offence rendering him no longer a fit and proper person to provide conveyancing services as a qualified conveyancer or, as the case may be, executry services as an executry practitioner,

they may take such of the steps set out in subsection (2) below as they think fit and shall, without prejudice to subsection (6) below, intimate their decision to the practitioner by notice in writing.

- (2) The steps referred to in subsection (1) above are—
- (a) to determine that the amount of fees and outlays which the practitioner may charge in respect of such services as the Board may specify shall be—
    - (i) nil; or
    - (ii) such amount as the Board may specify in the determination,

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- and to direct the practitioner to comply, or secure compliance, with such of the requirements set out in subsection (5) below as appear to them to be necessary to give effect to the determination;
- (b) to direct the practitioner to secure the rectification at his or its own expense of any such error, omission or other deficiency arising in connection with the services as the Board may specify;
  - (c) to attach conditions (or, as the case may be, further conditions) to the registration of the practitioner or to vary any condition so attached;
  - (d) to suspend or revoke that registration;
  - (e) subject to subsection (3) below, to impose on the practitioner a fine not exceeding £10,000;
  - (f) in a case where the practitioner has provided inadequate professional services, to direct the practitioner to pay to the client by way of compensation such sum, not exceeding £1,000, as the Board may specify;
  - (g) to censure the practitioner; and
  - (h) to make a report of the Board's findings to any other person exercising functions with respect to—
    - (i) the practitioner; or
    - (ii) any person employed by or acting on behalf of the practitioner in connection with the provision of the services.
- (3) The Board shall not impose a fine under subsection (2)(e) above where, in relation to the subject matter of the Board's inquiry, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than two years.
- (4) Any fine imposed under subsection (2)(e) above shall be treated for the purposes of [F6section 211(5) of the Criminal Procedure (Scotland) Act 1995] (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (5) The requirements referred to in subsection (2)(a) above are—
- (a) to refund, whether in whole or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the practitioner in connection with the services; and
  - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (6) Where the Board make a direction under subsection (2)(a), (b) or (f) above they shall, by notice in writing, require the practitioner to which the direction relates to give, within such period being not less than 21 days as the notice may specify, an explanation of the steps which he or it has taken to comply with the direction.
- (7) Where a practitioner—
- (a) fails to comply with a notice under subsection (6) above; or
  - (b) complies with such a notice but the Board are not satisfied as to the steps taken by the practitioner to comply with the direction to which the notice relates,
- the Board may apply to the Court of Session for an order requiring the practitioner to comply with the direction to which the notice relates within such time as the court may order.
- (8) Where the Board take a step set out in subsection (2)(c) or (d) above and—

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- (a) the period specified in subsection (11)(a) or (b) below has expired without an application for review or, as the case may be, an application to the Court of Session having been made; or
  - (b) where such an application is made, the matter is finally determined in favour of the Board's decision or the application is withdrawn,
- they shall amend the register of executry practitioners or, as the case may be, the register of qualified conveyancers accordingly.
- (9) The Board shall—
- (a) subject to subsection (10) below, publish every decision taken by them under subsection (1) above (including a decision that they are not satisfied as to the matters mentioned in subsection (1)(a) to (d)); and
  - (b) make available a copy of every decision published under paragraph (a) above for inspection by any person without charge.
- (10) In carrying out their duty under subsection (9) above, the Board may refrain from publishing any names or other information which would, in their opinion, damage or be likely to damage the interests of persons other than—
- (a) the practitioner to whom the decision relates; or
  - (b) where the practitioner is an individual, his partners; or
  - (c) his or their families,
- but where they so refrain, they shall publish their reasons for so doing.
- (11) Where the Board take a step set out in subsection (2)(a) to (g) above, the practitioner concerned may—
- (a) within 21 days of the date on which the Board's decision is intimated to it or him, apply to the Board to review their decision; and
  - (b) within 21 days of the date on which the outcome of such review is intimated to it or him, apply to the Court of Session, which may make such order in the matter as it thinks fit.
- (12) Part II of Schedule 1 to this Act (Board's powers of investigation for the purposes of this section and section 21) shall have effect.
- (13) The Secretary of State, after consulting the Board, may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend subsection (2)(f) above by substituting for the sum for the time being specified in that provision such other sum as he considers appropriate.
- (14) The taking of any steps under subsection (2) above shall not be founded upon in any proceedings for the purpose of showing that the practitioner in respect of whom the steps were taken was negligent.
- (15) A direction under subsection (2)(f) above to a practitioner to pay compensation to a client shall not prejudice any right of that client to take proceedings against that practitioner for damages in respect of any loss which he alleges he has suffered as a result of that practitioner's negligence, and any sum directed to be paid to that client under that provision may be taken into account in the computation of any award of damages made to him in any such proceedings.
- (16) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend subsection (2)(e) above by substituting for the amount for the time being specified in



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that provision such other amount as appears to him to be justified by a change in the value of money.

- (17) In this section “executory practitioner” and “qualified conveyancer” respectively include any executory practitioner or qualified conveyancer whether or not it or he was registered as such at the time when the subject matter of the Board’s inquiry occurred and notwithstanding that subsequent to that time it or he has ceased to be so registered.

#### Textual Amendments

**F6** Words in s. 20(4) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 78

## 21 Board’s intervention powers.

- (1) The powers conferred on the Board by this section may be exercised if, after such inquiry (if any) as the Board consider appropriate, it appears to them to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an independent qualified conveyancer or an executory practitioner (each of whom is in this section referred to as a “relevant practitioner”).
- (2) The Board may, in particular, exercise any such power where it appears to them that a relevant practitioner—
- (a) is no longer a fit and proper person to provide conveyancing services or, as the case may be, executory services;
  - (b) has ceased, for whatever reason, to provide such services; or
  - (c) has failed, or is likely to fail, to comply with regulations made under section 17(11) or, as the case may be, section 18(10) of this Act.
- (3) The Board may direct the relevant practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
- (a) any assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent qualified conveyancer or, as the case may be, an executory practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (4) The Board may direct the relevant practitioner to transfer to the Board, or to such persons (in this section referred to as “the trustees”) as may be specified in the direction—
- (a) all assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent qualified conveyancer or, as the case may be, an executory practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (5) A relevant practitioner to whom a direction is given may, within 21 days of the date on which the direction is received by him, apply to the Court of Session, which may make such order in the matter as it thinks fit.
- (6) A relevant practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to apply to the Court of Session under subsection (5) above).

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- (7) If, on an application to the Court of Session by the Board, the court is satisfied—
- (a) that a relevant practitioner has failed, within a reasonable time, to comply with any direction given to him; or
  - (b) that there is a reasonable likelihood that a relevant practitioner will so fail,
- the court may make an order requiring the practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.
- (8) Any assets which have been transferred as a result of a direction given under subsection (4) above shall be held by the Board, or by the trustees, on trust for the client or, as the case may be, the practitioner concerned.
- (9) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the Board.
- (10) If the Board have reasonable cause to believe that a relevant practitioner or an employee of a relevant practitioner has been guilty of dishonesty resulting in pecuniary loss to a client of the relevant practitioner, they may apply to the Court of Session for an order that no payment be made by any bank, building society or other body named in the order out of any bank, building society or other account or any sum deposited in the name of the relevant practitioner without the leave of the court and the court may make such an order.
- (11) Any direction under this section—
- (a) shall be given in writing;
  - (b) shall state the reason why it is being given;
  - (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the relevant practitioner); and
  - (d) may be varied or revoked by a further direction given by the Board.
- (12) In this section—
- “assets” includes any sum of money (in whatever form and whether or not in any bank, building society or other account) and any book, account, deed or other document held by the relevant practitioner on his own behalf in connection with his business as a relevant practitioner or on behalf of the client concerned; and
- “independent qualified conveyancer” and “executory practitioner” respectively include any independent qualified conveyancer or executory practitioner whether or not he was registered as such at the time when the matter in relation to which the Board exercise or propose to exercise their powers under this section arose and notwithstanding that subsequent to that time he has ceased to be so registered.

## **22 Disclosure of documents etc.**

- (1) Any communication made to or by—
- (a) an independent qualified conveyancer or an executory practitioner in the course of his or its acting as such for a client; or
  - (b) a recognised financial institution in the course of providing executory services for a client,

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shall in any action or proceedings in any court be protected from disclosure on the ground of confidentiality between client and professional legal adviser in like manner as if the conveyancer, practitioner or institution had at all material times been a solicitor acting for the client.

- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to confidentiality between client and professional legal adviser could be maintained, shall, with any necessary modifications, have effect in relation to—
- (a) an independent qualified conveyancer;
  - (b) an executry practitioner; and
  - (c) a recognised financial institution in relation to the provision of executry services,
- as it has effect in relation to a solicitor.

#### Commencement Information

**I15** S. 22 partly in force; s. 22 not in force at Royal Assent see 75(2); s. 22(1)(a)(2)(a)(b) in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. and S.I. 1996/2966, art. 2

## 23 Interpretation of sections 16 to 22.

In sections 16 to 22 of this Act and this section, except where the context otherwise requires—

“the Board” means the Scottish Conveyancing and Executry Services Board;

“conveyancing services” means the preparation of writs, contracts and other documents in connection with the transfer of heritable property and loans secured over such property, and services ancillary thereto, but does not include any services—

- (a) relating to the arranging of a loan; or
- (b) falling within section 1(1)(a) of the <sup>M21</sup>Estate Agents Act 1979;

“executry practitioner” means a person registered under section 18 in the register of executry practitioners;

“executry services” means the drawing and preparation of papers on which to found or oppose an application for a grant of confirmation of executors and services in connection with the administration, ingathering, distribution and winding up of the estate of a deceased person by executors, but does not include anything which constitutes [<sup>F7</sup>carrying on a regulated activity within the meaning of the Financial Services and Markets Act 2000];

“inadequate professional services” means professional services which are in any respect not of the quality which could reasonably be expected of a competent practitioner; and references to the provision of inadequate professional services shall be construed as including references to not providing professional services which such a practitioner ought to have provided;

“independent qualified conveyancer” means a person registered as such under section 17(7) in the register of qualified conveyancers;

“practitioner” means an executry practitioner or a qualified conveyancer;

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“qualified conveyancer” means a person registered under section 17 in the register of qualified conveyancers; and

“recognised financial institution” has the meaning given to it in section 19(2).

#### Textual Amendments

**F7** Words in the definition of “executory services” in s. 23 substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 233](#)

#### Commencement Information

**I16** S. 23 wholly in force at 1.4.1991 see s. 75(2) and [S.I. 1991/822](#), [art. 3](#), [Schedule](#).

#### Marginal Citations

**M21** [1979 c. 38](#).

### *Rights of audience*

#### **24 Rights of audience in the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary.**

After section 25 of the 1980 Act there shall be inserted the following section—

##### **“25A Rights of audience in the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary.**

- (1) Without prejudice to section 250 (right of audience of solicitor before single judge) of the Criminal Procedure (Scotland) Act 1975 and section 48(2)(b) (extension of rights of audience by act of sederunt) of the Court of Session Act 1988, a solicitor who—
  - (a) seeks a right of audience in, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council or, on the other hand, the High Court of Justiciary; and
  - (b) has satisfied the Council as to the requirements provided for in this section,
 shall have a right of audience in those courts or, as the case may be, that court.
- (2) The requirements mentioned in subsection (1), in relation to the courts or, as the case may be, the court in which a solicitor seeks a right of audience, are that—
  - (a) he has completed, to the satisfaction of the Council, a course of training in evidence and pleading in relation to proceedings in those courts or that court;
  - (b) he has such knowledge as appears to the Council to be appropriate of—
    - (i) the practice and procedure of; and
    - (ii) professional conduct in regard to,
 those courts or that court; and
  - (c) he has satisfied the Council that he is, having regard among other things to his experience in appropriate proceedings in the sheriff court,

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otherwise a fit and proper person to have a right of audience in those courts or that court.

- (3) Where a solicitor has satisfied the Council as to the requirements of subsection (2) in relation to the courts or, as the case may be, the court in which he seeks a right of audience the Council shall make an appropriate annotation on the roll against his name.
- (4) The Council shall make rules under this section as to—
- (a) the matters to be included in, the methods of instruction to be employed in, and the qualifications of the person who will conduct, any course of training such as is mentioned in subsection (2)(a); and
  - (b) the manner in which a solicitor's knowledge of the practice and procedure and professional conduct mentioned in subsection (2)(b) is to be demonstrated,
- and separate rules shall be so made in relation to, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council and, on the other hand, the High Court of Justiciary.
- (5) The Council shall make rules of conduct in relation to the exercising of any right of audience held by virtue of this section.
- (6) Where a solicitor having a right of audience in any of the courts mentioned in subsection (1) is instructed to appear in that court, those instructions shall take precedence before any of his other professional obligations, and the Council shall make rules—
- (a) stating the order of precedence of those courts for the purposes of this subsection;
  - (b) stating general criteria to which solicitors should have regard in determining whether to accept instructions in particular circumstances; and
  - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any of those courts by a solicitor holding an appropriate right of audience is so represented,
- and for the purposes of rules made under this subsection the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate jurisdiction, may be treated as separate courts.
- (7) Subsection (6) does not apply to an employed solicitor whose contract of employment prevents him from acting for persons other than his employer.
- (8) Subject to subsections (9) and (10), the provisions of section 34(2) and (3) apply to rules made under this section as they apply to rules made under that section and, in considering any rules made by the Council under subsection (5), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights of audience by all practitioners appearing before the Court of Session and the High Court of Justiciary.
- (9) The Council shall, after any rules made under subsection (4) have been approved by the Lord President, submit such rules to the Secretary of State, and no such rules shall have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved them.

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- (10) The Council shall, after any rules made under subsection (5) have been approved by the Lord President, submit such rules to the Secretary of State.
- (11) Where the Secretary of State considers that any rule submitted to him under subsection (10) would directly or indirectly inhibit the freedom of a solicitor to appear in court or undertake all the work preparatory thereto he shall consult the Director in accordance with section 64A.
- (12) The Council may bring into force the rules submitted by them to the Secretary of State under subsection (10) with the exception of any such rule which he has, in accordance with section 64B, refused to approve.
- (13) Nothing in this section affects the power of any court in relation to any proceedings—
  - (a) to hear a person who would not otherwise have a right of audience before the court in relation to those proceedings; or
  - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before the court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.
- (14) Where a complaint has been made that a solicitor has been guilty of professional misconduct in the exercise of any right of audience held by him by virtue of this section, the Council may, or if so requested by the Lord President shall, suspend him from exercising that right pending determination of that complaint under Part IV.
- (15) Where a function is conferred on any person or body by this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.”.

#### Commencement Information

**I17** S. 24 wholly in force at 3.6.1991. See s. 75(2) and S.I. 1991/1252, art. 3, [Schedule 1](#).

VALID FROM 19/03/2007

#### **25 Rights to conduct litigation and rights of audience.**

- (1) Any professional or other body may, for the purpose of enabling any of their members who is a natural person to acquire—
  - (a) rights to conduct litigation on behalf of members of the public; and
  - (b) rights of audience,
 make an application in that regard to the Lord President and the Secretary of State.
- (2) An application under subsection (1) above shall include a draft scheme—
  - (a) specifying—
    - (i) the courts;
    - (ii) the categories of proceedings;
    - (iii) the nature of the business; and

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- (iv) the rights to conduct litigation and the rights of audience, in relation to which the application is made;
- (b) describing—
- (i) the training requirements which the body would impose upon any of their members who sought to acquire any right such as is mentioned in subsection (1) above; and
  - (ii) the code of practice which they would impose upon their members in relation to the exercise by those members of any rights acquired by them by virtue of this section,
- in the event of the application being granted; and
- (c) proposing arrangements for—
- (i) the indemnification of members of the public against loss suffered by them through the actings of the body's members in the exercise by those members of any rights acquired by them by virtue of this section; and
  - (ii) the treatment by the body of complaints made to them by members of the public in relation to the actings of members of the body exercising rights acquired by virtue of this section,
- and shall state that the body have complied with the provisions of Schedule 2 to this Act.
- (3) A code of practice such as is mentioned in subsection (2)(b)(ii) above shall include provision with regard to revoking, suspending or attaching conditions to the exercise of any right acquired by a member of the body by virtue of this section in consequence of a breach by that member of that code of practice; and shall in particular include provision enabling the body to comply with the provisions of section 27(4) of this Act.
- (4) A draft scheme submitted under this section shall also include the proposals of the body in relation to such other matters as may be prescribed by the Secretary of State in regulations made under this section.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Schedule 2 shall have effect in relation to the publication of applications made under subsection (1) above.

VALID FROM 19/03/2007

## 26 Consideration of applications made under section 25.

- (1) The Lord President shall consider the provision made in any draft scheme submitted to him under section 25(1) of this Act in relation to the matters mentioned in section 25(2); and the Secretary of State shall, subject to subsection (5) below and to section 40 of this Act, consider the provision so made in section 25(2)(b) and (c).
- (2) In considering the code of practice included in the draft scheme by virtue of section 25(2)(b)(ii), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights to conduct



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litigation and rights of audience by all practitioners in relation to the court or, as the case may be, the courts, mentioned in the application.

(3) The Lord President and the Secretary of State shall—

- (a) consult each other in considering a draft scheme submitted to them under section 25(1); and
- (b) consider any written representations timeously made to them under Schedule 2 to this Act,

and may, either jointly or severally, make preliminary observations to the body concerned in relation to that draft; and the body may make such adjustments to the draft as appear to them to be appropriate, and the Lord President and the Secretary of State (who shall, in accordance with section 40, consult the Director in respect of any adjustments made in relation to the matters mentioned in section 25(2)(b) or (c)) shall thereafter consider the draft scheme as so adjusted.

(4) In considering a draft scheme under subsection (1) or (3) above, the Lord President and the Secretary of State shall have regard to whether the provisions of the draft scheme are such as—

- (a) to achieve; and
- (b) to ensure the maintenance of,

appropriate standards of conduct and practice by persons who may acquire rights to conduct litigation or rights of audience in the event of the draft scheme being approved.

(5) In relation to any code of practice such as is mentioned in section 25(2)(b)(ii), the duty of the Secretary of State under subsection (1) above is limited to a consideration of any provision of such a code as would, in his view, directly or indirectly inhibit the freedom of a member of the body concerned to undertake all the work necessary for the preparation of a case or for the presentation of a case before the court, other than such a provision which has that effect only by reason of the provision made in the draft scheme with respect to the matters mentioned in section 25(2)(a).

(6) After they have considered a draft scheme under subsections (1) and (3) above, if the Lord President and the Secretary of State—

- (a) are satisfied with the draft scheme, the Lord President shall grant the application, and shall so inform the body;
- (b) are not satisfied with the scheme, the Lord President shall refuse the application, and shall so inform the body, giving written reasons for the refusal,

and the Lord President shall send a copy of the letter granting or refusing the application to any person who has made representations in relation to the draft scheme under Schedule 2 to this Act.

(7) Where the Lord President has granted an application under subsection (6)(a) above, in relation to—

- (a) civil proceedings, the Court of Session may by act of sederunt; and
- (b) criminal proceedings, the High Court of Justiciary may by act of adjournal, make such provision for giving effect to the scheme as appears to it to be appropriate.



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VALID FROM 19/03/2007

## 27 Exercise of rights to conduct litigation and rights of audience.

- (1) Where an application made under section 25 of this Act has been granted under section 26 of this Act, any member of the body concerned who has complied with the terms of the scheme in relation to the matters mentioned in section 25(2)(b)(i), and who appears to the body to be a fit and proper person, shall have the right to conduct litigation or rights of audience to which that compliance entitles him.
- (2) Where a function is, whether expressly or by implication, conferred on any person or body by section 26 or this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.
- (3) Nothing in subsection (1) above affects the power of any court in relation to any proceedings—
  - (a) to hear a person who would not otherwise have a right of audience before that court in relation to those proceedings; or
  - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before that court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.
- (4) Where a complaint has been made that a person has been guilty of professional misconduct in the exercise of any right to conduct litigation or right of audience held by him by virtue of this section, the body of which he is a member may, or if so requested by the Lord President shall, suspend that person from exercising that right pending determination of that complaint by the body.
- (5) Where a person holding a right of audience in any court by virtue of this section is instructed to appear in that court, those instructions shall take precedence before any of his other professional or business obligations, and the code of practice mentioned in section 25(2)(b)(ii) shall include rules—
  - (a) stating the order of precedence of courts for the purposes of this subsection;
  - (b) stating general criteria to which members of the body should have regard in determining whether to accept instructions in particular circumstances; and
  - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any court by one of their members holding an appropriate right of audience is so represented,and, for the purposes of such rules, the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate jurisdiction, may be treated as separate courts.
- (6) A person exercising any right of audience held by virtue of this section shall have the same immunity from liability for negligence in respect of his acts or omissions as if he were an advocate, and no act or omission on the part of any such person shall give rise to an action for breach of contract in relation to the exercise by him of such a right of audience.
- (7) Any person who wilfully and falsely—

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- (a) pretends to have any right to conduct litigation or right of audience by virtue of this section; or
- (b) where he has any such right, pretends to have any further such right which he does not have; or
- (c) takes or uses any name, title, addition or description implying that he has any such right or, as the case may be, any further such right,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(8) For the purposes of section 25, section 26 and this section—

“right of audience” includes, in relation to any court, any such right exercisable by an advocate; and

“right to conduct litigation” means the right to exercise on behalf of a client all or any of the functions, other than any right of audience, which may be exercised by a solicitor in relation to litigation.

VALID FROM 19/03/2007

## **28 Surrender of rights to conduct litigation and rights of audience.**

- (1) Subject to the provisions of this section, where an application made under section 25 of this Act has been granted under section 26(6) of this Act, the body concerned may apply to the Lord President and the Secretary of State for permission to surrender any entitlement of their members to acquire rights to conduct litigation or rights of audience.
- (2) The Lord President and the Secretary of State shall jointly issue directions as to the requirements with which any body wishing to surrender their members' entitlement will have to comply, and, without prejudice to the generality of the foregoing, any such directions may include provision—
  - (a) where members of a body have acquired rights to conduct litigation or rights of audience, as to the arrangements to be made for the completion of any work outstanding at the time the application is made; and
  - (b) relating to the particular circumstances of a particular body.
- (3) An application under subsection (1) above shall describe the manner in which the body have complied, or will comply, with the directions issued under subsection (2) above.
- (4) Where the Lord President and the Secretary of State are satisfied that the body concerned have complied, or will comply, with the directions issued under subsection (2) above, the Lord President shall grant the application, and shall so inform the body.
- (5) With effect from the date on which an application under subsection (1) above is granted, any member of the body concerned who has acquired rights to conduct litigation or rights of audience by virtue of the scheme shall cease to hold those rights.

**Status:** Point in time view as at 01/12/2001. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 is up to date with all changes known to be in force on or before 07 July 2023. 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)

VALID FROM 19/03/2007

## 29 Revocation of rights granted under section 26.

- (1) Where it appears to the Secretary of State that a body has failed to comply with a direction under section 42(6) of this Act, he may by order made by statutory instrument revoke the grant of the application made by that body under section 25 of this Act.
- (2) No instrument shall be made under subsection (1) above unless a draft of the instrument has been laid before and approved by each House of Parliament.
- (3) With effect from the date on which an order under subsection (1) above takes effect, any member of the body concerned who has acquired rights to conduct litigation or rights of audience by virtue of the scheme shall cease to hold those rights.

## 30 Regulation of right of English, Welsh and Northern Irish practitioners to practise in Scotland.

- (1) The Secretary of State, after consulting the Lord President, may by regulations prescribe circumstances in which, and conditions subject to which, practitioners who are qualified to practise in England and Wales or Northern Ireland may, in such capacity as may be prescribed, exercise in Scotland—
  - (a) prescribed rights of audience; or
  - (b) prescribed rights to conduct litigation,without being entitled to do so apart from the regulations.
- (2) The Secretary of State, after consulting the Lord President, may by regulations make provision for the purpose of enabling practitioners who are entitled to practise in England and Wales or Northern Ireland to become qualified to practise in Scotland on terms, and subject to conditions, corresponding or similar to those on which practitioners who are entitled to practise in member States may become qualified to practise in Scotland.
- (3) Regulations made under subsection (1) above may, in particular—
  - (a) prescribe any right of audience which may not be exercised by a person in Scotland unless he is instructed to act together with a person who has that right of audience there;
  - (b) prescribe legal services which may not be provided by any person practising by virtue of the regulations;
  - (c) prescribe the title or description which must be used by any person practising by virtue of the regulations;
  - (d) provide for the body by whom and the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified; and
  - (e) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations.

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- (4) Regulations made under subsection (1) or (2) above may modify any rule of law or practice which the Secretary of State considers should be modified in order to give effect to the regulations.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section “practitioner” means, in relation to England and Wales and Northern Ireland—
  - (a) a barrister or solicitor; and
  - (b) any person falling within such category as may be prescribed in regulations made by the Secretary of State after consultation with the Lord President.

#### Commencement Information

**I18** S. 30 wholly in force at 3.6.1991. See s. 75(2) and S.I. 1991/1252, art. 3, [Schedule 1](#)

### *Rules of conduct*

#### **31 Rules of conduct etc.**

- (1) Any rule, whether made before or after the coming into force of this section, whereby an advocate is prohibited from forming a legal relationship with another advocate or with any other person for the purpose of their jointly offering professional services to the public shall have no effect unless it is approved by the Lord President and the Secretary of State; and before approving any such rule the Secretary of State shall consult the Director in accordance with section 40 of this Act.
- (2) Where it appears to the Faculty of Advocates that any rule of conduct in relation to the exercise of an advocate’s right of audience in the Court of Session is more restrictive than the equivalent rule in relation to the exercise of the equivalent right in the sheriff court, they may submit that rule to the Secretary of State for his approval, and the Secretary of State shall consult the Director in accordance with section 40 of this Act, and thereafter, having—
  - (a) considered any advice tendered to him by the Director;
  - (b) compared the rule applicable in the Court of Session with the equivalent rule applicable in the sheriff court; and
  - (c) considered whether the interests of justice require that there should be such a rule in the Court of Session,
 he may approve or refuse to approve the rule.
- (3) In section 34 of the 1980 Act (rules as to professional practice, conduct and discipline) —
  - (a) at the end of subsection (1A) there shall be inserted—
 

“and

    - (f) make such additional or different provision as the Council think fit in relation to solicitors who, or incorporated practices which, are partners in or directors of multi-disciplinary practices.”; and

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(b) after subsection (3) there shall be inserted—

“(3A) Without prejudice to subsection (3), any rule made, whether before or after the coming into force of this subsection, by the Council under this section or section 35 which has the effect of prohibiting the formation of multi-disciplinary practices shall not have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved it.”.

### *Multi-national practices*

## **32 Multi-national practices.**

Before section 61 of the 1980 Act there shall be inserted the following section—

### **“60A Multi-national practices.**

- (1) Subject to the provisions of this section, solicitors and incorporated practices may enter into multi-national practices with registered foreign lawyers.
- (2) The Council shall maintain a register of foreign lawyers, and may make rules with regard to registration; and, without prejudice to the generality of the foregoing, such rules may include provision as to—
  - (a) the manner in which applications for registration are to be made;
  - (b) the fees payable in respect of such applications;
  - (c) conditions which may be imposed in respect of registration; and
  - (d) the period for which any such registration is to run.
- (3) Section 34(2) and (3) apply to rules made under subsection (2) as they apply to rules made under that section.
- (4) Any foreign lawyer may apply to the Council to be registered as such for the purposes of this section and the Council shall, if they are satisfied that the legal profession of which the applicant is a member is so regulated as to make it appropriate for him to be allowed to enter into a multi-national practice with solicitors or incorporated practices, enter his name on the register.
- (5) Subject to subsection (6), the Secretary of State may by order made by statutory instrument provide that any enactment or instrument—
  - (a) passed or made before the commencement of this section;
  - (b) having effect in relation to solicitors; and
  - (c) specified in the order,shall have effect with respect to registered foreign lawyers as it has effect with respect to solicitors.
- (6) Before making any order under subsection (5), the Secretary of State shall consult the Council.
- (7) An order under subsection (5) may provide for an enactment or instrument to have effect with respect to registered foreign lawyers subject to such additions, omissions or other modifications as the Secretary of State specifies in the order.

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- (8) No order shall be made under subsection (5) unless a draft of the order has been approved by both Houses of Parliament.”

#### Commencement Information

**I19** S. 32 partly in force; s. 32 not in force at Royal Assent see s. 75(2); s. 32 in force for certain purposes at 17.3.1993 by S.I. 1993/641, art. 3, Sch.

### *Complaints in relation to legal services*

#### **33 Complaints in relation to legal services.**

- (1) Where any person with an interest has made a complaint (a “conduct complaint”) to a professional organisation that a practitioner has—
- (a) been guilty of professional misconduct; or
  - (b) provided inadequate professional services,
- the organisation shall investigate the matter, and shall thereafter make a written report to the complainer and the practitioner concerned of—
- (i) the facts of the matter as found by the organisation; and
  - (ii) what action the organisation propose to take, or have taken, in the matter.

- (2) The organisation shall ensure that [<sup>F8</sup>their procedures for dealing with conduct complaints do not conflict with the duty imposed by section 34A of this Act in relation to any report sent to them under that section].

<sup>F9</sup>(3) .....

<sup>F9</sup>(4) .....

- (5) For the purposes of this section [<sup>F10</sup>and sections 34, 34A and 34B of this Act]—
- “professional organisation” means—
- (a) the Faculty of Advocates;
  - (b) the Council of the Law Society of Scotland;
  - (c) the Scottish Conveyancing and Executry Services Board established under section 16 of this Act; and
  - (d) a body which has made a successful application under section 25 of this Act; and
- “practitioner” means, in relation to—
- (a) the Faculty of Advocates, an advocate;
  - (b) the Council, a solicitor;
  - (c) the Scottish Conveyancing and Executry Services Board, a practitioner within the meaning of section 23 of this Act; and
  - (d) a body which has made a successful application under section 25 of this Act, any person exercising—
    - (i) a right to conduct litigation; or
    - (ii) a right of audience;
 acquired by virtue of section 27 of this Act.

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### Textual Amendments

**F8** Words in s. 33(2) substituted (21.5.1997) by 1997 c. 35, ss. 5(1)(a), 6, 11(2)

**F9** S. 33(3)(4) repealed (21.5.1997) by 1997 c. 35, ss. 5(1)(b), 6, 10, 11(2), Sch.

**F10** Words in s. 33(5) inserted (21.5.1997) by 1997 c. 35, ss. 5(1)(c), 6, 11(2)

### Modifications etc. (not altering text)

**C3** S. 33(5) extended (21.5.2000) by S.S.I. 2000/121, reg. 37, Sch. 2 para. 6(2)

### Commencement Information

**I20** S. 33 wholly in force at 3.6.1991 see s. 75(2) and S.I. 1991/1252, art. 3, Sch. 1

## Scottish legal services ombudsman

### 34 Scottish legal services ombudsman.

(1) The Secretary of State may, after consultation with the Lord President, and subject to subsection (9) below, appoint a person, to be known as the Scottish legal services ombudsman, [<sup>F11</sup>for the purpose of conducting investigations under this Act].

[<sup>F12</sup>(1A) Subject to subsection (1E) below, the ombudsman may investigate any written complaint (a “handling complaint”) made to him by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person has been dealt with by the professional organisation concerned.

(1B) Subsection (1A) above applies whether or not the professional organisation concerned have treated the conduct complaint as a conduct complaint.

(1C) The ombudsman may decide—

- (a) not to investigate a handling complaint; or
- (b) to discontinue his investigation of a handling complaint.

(1D) If the ombudsman decides not to investigate a handling complaint or decides to discontinue his investigation of such a complaint he shall notify—

- (a) the person who made the handling complaint; and
- (b) the professional organisation concerned,

of his decision and the reason for it.

(1E) The ombudsman shall not investigate a handling complaint where—

- (a) the professional organisation concerned have not completed their investigation of the conduct complaint to which it relates; or
- (b) it is made after the expiry of such period of time as may be specified for the purpose of this subsection in directions given by the Secretary of State by virtue of paragraph 2 of Schedule 3 to this Act.

(1F) Paragraph (a) of subsection (1E) above does not apply if—

- (a) the handling complaint is that the professional organisation concerned—
  - (i) have acted unreasonably in failing to start an investigation into the complaint; or
  - (ii) having started such an investigation, have failed to complete it within a reasonable time; or



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- (b) the ombudsman considers that, even though the complaint is being investigated by that organisation, an investigation by him is justified.]
- (2) The ombudsman shall make such investigation of any handling complaint as seems to him to be appropriate <sup>F13</sup> . . .
- [<sup>F14</sup>(2A) Where the ombudsman is conducting an investigation under this Act, he may require the professional organisation concerned—
- (a) to provide him with such information, being information which is within the knowledge of the professional organisation, as he considers relevant to his investigation; or
- (b) to produce to him such documents, being documents which are within the possession or control of the organisation, as he considers relevant to his investigation,
- (including any information or, as the case may be, documents obtained by the organisation from the practitioner concerned while investigating the conduct complaint to which the handling complaint relates); and, notwithstanding any duty of confidentiality owed to any person by the professional organisation as respects any such information or, as the case may be, documents, the organisation shall comply with such a requirement.
- <sup>F14</sup>(2B) Where any information requested by the ombudsman under subsection (2A) above is not within the knowledge of the professional organisation concerned, or any documents so requested are not within their possession or control, the ombudsman may require the practitioner concerned in the conduct complaint to which the handling complaint relates—
- (a) to provide him with that information, in so far as it is within the knowledge of the practitioner; or
- (b) to produce to him those documents, if they are within the possession or control of the practitioner;
- and, notwithstanding any duty of confidentiality owed to any person by the practitioner as respects any such information or, as the case may be, documents, the practitioner shall comply with such a requirement.]
- (3) . . . . .
- [<sup>F15</sup>(4) Where the ombudsman is conducting an investigation under this Act, he may at any time make a written interim report in relation to the investigation and shall send a copy of any such report to—
- (a) the person who made the handling complaint; and
- (b) the professional organisation concerned.]
- (5) The ombudsman may—
- (a) if so requested by any person appointed to carry out equivalent functions in relation to the provision of legal services in England and Wales, investigate a complaint against a professional body in England and Wales on that person's behalf; and
- (b) request any person appointed as mentioned in paragraph (a) above to investigate a complaint against an organisation in Scotland on his behalf.
- (6) The Secretary of State may by regulations extend the jurisdiction of the ombudsman by providing for this section to apply, with such modifications (if any) as he thinks fit, in relation to the investigation by the ombudsman of such categories of handling



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complaints as may be specified in the regulations with respect to the provision of executry services by persons other than executry practitioners within the meaning of section 23 of this Act.

- (7) Without prejudice to the generality of subsection (6) above, regulations under that subsection may make provision for the investigation of handling complaints with respect to particular persons or categories of person.
- (8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) The following shall not be eligible to be appointed as the ombudsman—
- (a) advocates;
  - (b) solicitors;
  - (c) members and officers of the Scottish Conveyancing and Executry Services Board established by section 16 of this Act;
  - (d) subject to paragraph (e) below, executry practitioners within the meaning of section 23 of this Act;
  - (e) where any such executry practitioner is a partnership or a body corporate, the partners or, as the case may be, the directors, secretary or other similar officers;
  - (f) the directors, secretary or other similar officers of any recognised financial institution within the meaning of section 19(2) of this Act;
  - (g) qualified conveyancers within the meaning of section 23 of this Act; or
  - (h) any member or employee of a professional or other body any of whose members has acquired any right to conduct litigation or right of audience by virtue of section 27 of this Act.
- (10) Schedule 3 to this Act shall have effect in relation to the ombudsman.

#### Textual Amendments

**F11** Words in s. 34(1) substituted (21.5.1997) by 1997 c. 35, ss. 1(2), 6, 11(2)

**F12** S. 34(1A)-(1F) inserted (21.5.1997) by 1997 c. 35, ss. 1(3), 6, 11(2)

**F13** Words in s. 34(2) repealed (21.5.1997) by 1997 c. 35, ss. 1(4), 6, 10, 11(2), Sch.

**F14** S. 34(2A)(2B) inserted (21.5.1997) by 1997 c. 35, ss. 1(5), 6, 11(2)

**F15** S. 34(4) substituted (21.5.1997) by 1997 c. 35, ss. 1(7), 6, 11(2)

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

**C4** S. 34(9) extended (21.5.2000) by S.S.I. 2000/121, reg. 37, Sch. 2 para. 6(3)

#### Commencement Information

**I21** S. 34 partly in force; s. 34 not in force at Royal Assent see 75(2); s. 34(1)(9)(a)-(c)(10) in force at 1.4.1991 by S.I. 1991/822, art. 3, Sch.; s. 34(2)-(8) in force at 3.6.1991 by S.I. 1991/1252, art. 3, Sch. 1; s. 34(9)(d)(e)(g) in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. and S.I. 1996/2966, art. 2

#### [<sup>F16</sup>34A Ombudsman's final report and recommendations.

- (1) Where the Scottish legal services ombudsman has completed an investigation under this Act he shall make a written report of his conclusions and shall send a copy of the report to—
- (a) the person who made the handling complaint;

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- (b) the professional organisation concerned; and
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (2) If the ombudsman decides to make a complaint about the practitioner concerned to the appropriate disciplinary body he may include in the report under this section a statement to that effect.
- (3) A report under this section may include one or more of the following recommendations—
  - (a) that the professional organisation concerned provide to the person making the handling complaint such information about the conduct complaint to which the handling complaint relates, and how it was dealt with, as the ombudsman considers appropriate;
  - (b) that the conduct complaint be investigated further by the professional organisation concerned;
  - (c) that the conduct complaint be reconsidered by the professional organisation concerned;
  - (d) that the professional organisation concerned consider exercising their powers in relation to the practitioner concerned;
  - (e) that the professional organisation concerned pay compensation of the stated amount to the person making the handling complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the conduct complaint was handled by that organisation;
  - (f) that the professional organisation to whom a recommendation under paragraph (e) above applies pay to the person making the handling complaint an amount specified by the ombudsman by way of reimbursement of the cost, or part of the cost, of making the handling complaint.
- (4) Where a report under this section includes any recommendation, the report shall state the ombudsman's reasons for making the recommendation.
- (5) For the purposes of the law of defamation the publication of any report of the ombudsman under this section and any publicity given under subsection (8) below shall be privileged unless the publication is proved to be made with malice.
- (6) It shall be the duty of any professional organisation to whom a report is sent by the ombudsman under this section to have regard to the conclusions and recommendations set out in the report so far as relating to that organisation.
- (7) Where a report sent to a professional organisation under this section includes a recommendation relating to them, the organisation shall, before the end of the period of three months beginning with the date on which the report was sent, notify the ombudsman, and the person who made the handling complaint, of—
  - (a) the action which they have taken to comply with the recommendation or in consequence of further consideration of the matter by them; or
  - (b) their decision not to comply wholly with a recommendation and any reason for that decision.
- (8) Where, at the end of the period of three months mentioned in subsection (7) above, a professional organisation have not wholly complied with a recommendation relating to them in a report under this section, the ombudsman may take such steps as he considers reasonable to publicise that fact; but shall in so publicising it state any reason given to

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the ombudsman by the organisation for their not having so complied (or a summary by the ombudsman of any such reason).

(9) Any reasonable expenses incurred by the ombudsman under subsection (8) above may be recovered by him (as a civil debt) from the professional organisation concerned.

(10) In this section—

“the stated amount” means such amount as may be specified by the ombudsman, being an amount which does not exceed the prescribed amount; and

“the prescribed amount” means £1000 or such greater amount as may from time to time be specified by order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F16** S. 34A inserted (21.5.1997) by 1997 c. 35, ss. 2, 6, 11(2)

### [<sup>F17</sup>34B Advisory functions of ombudsman.

(1) The Scottish legal services ombudsman may make recommendations to any professional organisation about their procedures for, and methods of, dealing with conduct complaints.

(2) It shall be the duty of a professional organisation to whom a recommendation is made under this section—

(a) to consider the recommendation; and

(b) to notify the ombudsman of the results of that consideration and any action which they have taken, or propose to take, in consequence of the recommendation.]

#### Textual Amendments

**F17** S. 34B inserted (21.5.1997) by 1997 c. 35, ss. 3, 6, 11(2)

### *Judicial appointments*

## 35 Judicial appointments.

(1) Paragraphs 1 to 3 of Schedule 4 to this Act shall have effect in relation to the eligibility of sheriffs principal, sheriffs and solicitors to be appointed as judges of the Court of Session.

(2) Paragraph 4 of the said Schedule shall have effect in relation to the appointment of—

(a) members of the Inner House of the Court of Session; and

(b) a Lord Ordinary of that Court to be the Lord Ordinary in exchequer causes.

(3) Notwithstanding any provision in any enactment, if it appears expedient to the Secretary of State he may, in accordance with the provisions of paragraphs 5 to 11 of

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the said Schedule, and after consulting the Lord President, appoint persons to act as temporary judges of the Court of Session.

<sup>F18</sup>(4) .....

<p><b>Textual Amendments</b></p> <p><b>F18</b> S. 35(4) repealed (5.1.1994) by 1993 c. 45, s. 2(2)(3), <b>Sch.2</b>.</p> <hr/> <p><b>Commencement Information</b></p> <p><b>I22</b> S. 35 wholly in force at 1.4.1991. See s. 75(2) and S.I. 1991/822, art. 3, <b>Schedule</b>.</p>
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*Solicitors’ and counsel’s fees*

**36 Solicitors’ and counsel’s fees.**

- (1) An advocate and the person instructing him may agree, in relation to a litigation undertaken on a speculative basis, that, in the event of the litigation being successful, the advocate’s fee shall be increased by such percentage as may, subject to subsection (2) below, be agreed.
- (2) The percentage increase which may be agreed under subsection (1) above shall not exceed such limit as the court may, after consultation with the Dean of the Faculty of Advocates, prescribe by act of sederunt.
- (3) After section 61 of the 1980 Act there shall be inserted the following section—

**“61A Solicitors’ fees.**

- (1) Subject to the provisions of this section, and without prejudice to—
  - (a) section 32(1)(i) of the Sheriff Courts (Scotland) Act 1971; or
  - (b) section 5(h) of the Court of Session Act 1988,
 where a solicitor and his client have reached an agreement in writing as to the solicitor’s fees in respect of any work done or to be done by him for his client it shall not be competent, in any litigation arising out of any dispute as to the amount due to be paid under any such agreement, for the court to remit the solicitor’s account for taxation.
- (2) Subsection (1) is without prejudice to the court’s power to remit a solicitor’s account for taxation in a case where there has been no written agreement as to the fees to be charged.
- (3) A solicitor and his client may agree, in relation to a litigation undertaken on a speculative basis, that, in the event of the litigation being successful, the solicitor’s fee shall be increased by such a percentage as may, subject to subsection (4), be agreed.
- (4) The percentage increase which may be agreed under subsection (3) shall not exceed such limit as the court may, after consultation with the Council, prescribe by act of sederunt.”

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(4) In section 33 of the <sup>M22</sup>Legal Aid (Scotland) Act 1986 (fees and outlays of solicitors and counsel who have provided services under that Act) there shall be added at the end the following subsection—

“(6) It shall not be competent, in any litigation arising out of any dispute as to the amount of—

- (a) any fees or outlays to be paid to a solicitor; or
- (b) any fees to be paid to an advocate,

under or by virtue of this Act, for the court to remit the account concerned for taxation.”.

#### Commencement Information

**I23** S. 36 partly in force; s. 36(2)(3) in force for certain purposes at 4.7.1992 and s. 36(1)-(3) wholly in force at 20.4.1992 see s. 75(2) and S.I. 1992/1599, arts.3,4, Schs. 1, 2.

#### Marginal Citations

**M22** 1986 c. 47.

### Miscellaneous and supplementary

#### 37 Admission of solicitors and notaries public.

(1) For subsection (2) of section 6 of the 1980 Act (admission of persons as solicitors) there shall be substituted the following subsection—

“(2) Where—

- (a) a person has complied with the requirements of subsection (1); but
- (b) the Council have not lodged a petition for his admission as a solicitor within one month of his having so complied,

he may apply by petition to the court for admission as a solicitor; and if he produces the certificate mentioned in paragraph (b) of subsection (1) the court shall make an order admitting him as a solicitor.”.

(2) Section 57 of that Act (admission of notaries public) shall be amended as follows—

- (a) for subsection (1) there shall be substituted—
 

“(1) The offices and functions of—

  - (a) the clerk to the admission of notaries public; and
  - (b) the keeper of the register of notaries public,

are hereby transferred to the Council.”;
- (b) in subsection (2), for the words from “grant” to the end there shall be substituted “ direct the Council to register him in the register of notaries public.” ”;
- (c) after subsection (2) there shall be inserted the following subsections—
 

“(2A) A petition by the Council under section 6(3A) for the admission of a person as a solicitor may, if the person so requests, include an application for the person’s admission as a notary public; and an order on any such petition admitting that person as a solicitor may admit

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him as a notary public and direct the Council to register him in the register of notaries public.

(2B) A petition by a person under section 6(2) for his admission as a solicitor may include an application for his admission as a notary public; and an order on any such petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register him in the register of notaries public.”;

(d) in subsection (4) for the word “solicitor” there shall be substituted “ person” ”; and

(e) for subsection (5) there shall be substituted—

“(5) The Council may charge such reasonable fees as they consider appropriate in respect of the admission of any person as a notary public.”.

(3) In section 58 of that Act (removal from and restoration to the register of names of notaries public)—

(a) in subsection (1), for the words from “give” to the end there shall be substituted “ strike off or, as the case may be, remove his name from the register of notaries public” ”;

(b) in subsection (2), for the words from “it” to “thereupon” there shall be substituted “ the Council shall forthwith” ”;

(c) at the end of that section there shall be added the following subsections—

“(3) Where a person who is both a solicitor and a notary public is suspended from practising as a solicitor under this Act the Council shall forthwith remove the person’s name from the register of notaries public.

(4) If the suspension of such a person as is mentioned in subsection (3) is terminated or otherwise comes to an end the Council shall restore the person’s name to the register.”.

#### Commencement Information

I24 S. 37 wholly in force at 20.7.1992 see s. 75(2) and S.I. 1992/1599, art.4, Sch. 2.

### 38 Availability of legal aid in relation to services provided under this Act.

After section 43 of the <sup>M23</sup>Legal Aid (Scotland) Act 1986 there shall be inserted the following section—

#### “43A Application of Act to services provided under Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(1) Advice and assistance shall be available, in accordance with the provisions of this Act, in relation to the provision of executry services by executry practitioners and recognised financial institutions and conveyancing services by independent qualified conveyancers, all within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous

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Provisions) (Scotland) Act 1990 as they are so available in relation to the provision of the like services by solicitors.

- (2) Subject to any act of sederunt or act of adjournal made under subsection (7) of section 26 of that Act (consideration of applications made under section 25) advice and assistance, civil legal aid and criminal legal aid shall be available, in accordance with the provisions of this Act, in relation to the provision of services by persons who have acquired rights to conduct litigation or, as the case may be, rights of audience by virtue of that section as they are so available in relation to the provision of the like services by solicitors and, where appropriate, by advocates.
- (3) Where advice and assistance, civil legal aid or criminal legal aid has been made available by virtue of this section, the provisions of this Act shall apply in relation to the person providing those services as they apply in relation to a solicitor or advocate providing like services.”.

#### Commencement Information

**I25** S. 38 wholly in force on 30.09.1991 see s. 75(2) and s.I. 1991/2151, art. 3, Sch.

#### Marginal Citations

**M23** 1986 c. 47.

### 39 Removal of certain restrictions on the borrowing of the court process.

Section 29 of the 1980 Act (which restricts the borrowing of the process relating to any court proceedings to solicitors having a place of business, in relation to the Court of Session, in Edinburgh, and, in relation to the inferior courts, within the jurisdiction of the court concerned) shall cease to have effect.

#### Commencement Information

**I26** S. 39 wholly in force at 30.9.1991 see s. 75(2) and S.I. 1991/2151, art. 3, Sch.

### 40 Advisory and supervisory functions of the Director.

- (1) Before—
  - (a) making any regulations under section 17(11) or 18(10) of this Act; or
  - (b) approving any rules—
    - (i) made under section 17(3); or
    - (ii) such as are mentioned in section 31(1) or (2),
 of this Act; or
  - (c) considering any provisions of a draft scheme under section 26(1) or (3) of this Act,
 the Secretary of State shall first send a copy of the proposed regulations, rules or provisions to the Director.



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- (2) The Director shall consider whether any such regulations, rules or provisions as are mentioned in subsection (1) above would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Secretary of State as he thinks fit.
- (4) The Director may publish any advice given by him under subsection (3) above.
- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) above any matter—
  - (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the Director’s opinion, seriously and prejudicially affect the interests of that person.
- (6) For the purposes of the law of defamation, the publication of any advice by the Director under this section shall be absolutely privileged.

#### Commencement Information

**I27** S. 40 wholly in force at 30.9.1991 see s. 75(2) and [S.I. 1991/2151, art. 3, Sch.](#)

## 41 Investigatory powers of the Director.

- (1) For the purpose of investigating any matter under section 40 of this Act, the Director may by notice in writing—
  - (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person’s custody or under that person’s control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to him (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on the grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.
- (3) Subsections (5) to (8) of section 85 of the <sup>M24</sup>Fair Trading Act 1973 shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

#### Commencement Information

**I28** S. 41 wholly in force at 30.9.1991 see [s. 75\(2\)](#) and [s.I. 1991/2151, art. 3, Sch.](#)

#### Marginal Citations

**M24** 1973 c. 41.



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## 42 Review of rules approved by the Secretary of State.

- (1) Where the Secretary of State has approved—
  - (a) a rule under section 17(15) or 31(2) of this Act; or
  - (b) a draft scheme under section 26(6) of this Act,he may and, where the Lord President, in the case of a draft scheme such as is mentioned in paragraph (b), so requests shall, require the body which made the rule or, as the case may be, the scheme to review its terms.
- (2) When they have reviewed a rule or, as the case may be, a scheme, following a requirement made under subsection (1) above, the body concerned may revise the rule or scheme in the light of that review, and shall then submit the rule or scheme as revised or, if they have not revised it, as previously approved—
  - (a) in the case of a rule such as is mentioned in subsection (1)(a) above, to the Secretary of State; or
  - (b) in the case of a draft scheme such as is mentioned in subsection (1)(b) above, to the Secretary of State and the Lord President.
- (3) Where a rule, whether revised or as previously approved, is submitted to the Secretary of State under subsection (2)(a) above, he may—
  - (a) approve the rule as submitted to him; or
  - (b) amend the rule in such manner as he considers appropriate,and (except where the rule remains in the form previously approved) he may direct the body concerned to bring it into operation as soon as is practicable.
- (4) Where the Lord President and the Secretary of State are agreed that the terms of a draft scheme submitted to them under subsection (2)(b) above are satisfactory, the Secretary of State may—
  - (a) approve the scheme; and
  - (b) (except where the scheme remains in the form previously approved) direct the body concerned to bring the scheme, as so amended, into force as soon as is practicable.
- (5) Where either the Secretary of State or the Lord President is of the view that the terms of any such scheme so submitted to them are not satisfactory, but they do not agree as to what the terms of the scheme should be, the scheme shall continue to have effect as previously approved.
- (6) Where the Secretary of State and the Lord President agree both that the terms of a scheme so submitted to them are not satisfactory, and as to what the terms of the scheme should be, the Secretary of State may amend the scheme in such manner as he and the Lord President consider appropriate; and may direct the body concerned to bring the scheme, as so amended, into force as soon as is practicable.
- (7) The provisions of section 40(1)(b) and (c) of this Act shall apply to rules and schemes submitted under subsection (2) of this section as they apply to rules submitted under sections 17(15) and 31(2) and schemes submitted under section 25(1) of this Act.

### Commencement Information

**I29** S. 42 wholly in force at 30.9.1991 see s. 75(2) and S.I. 1991/2151, art. 3, Sch.

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### **43 Functions of Director in relation to certain rules made under the 1980 Act.**

After section 64 of the 1980 Act there shall be inserted the following sections—

#### **“64A Advisory and supervisory functions of the Director General of Fair Trading.**

- (1) Before considering any rule—
  - (a) made under section 25A(4) or (5); or
  - (b) such as is mentioned in section 34(3A),
 the Secretary of State shall send a copy of the proposed rule in question to the Director.
- (2) The Director shall consider whether the rule in question would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Secretary of State as he thinks fit.
- (4) The Director may publish any advice given by him under subsection (3).
- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) any matter—
  - (a) which relates to the affairs of a particular person; and
  - (b) the publication of which would, or might in the Director’s opinion, seriously and prejudicially affect the interests of that person.
- (6) For the purposes of the law of defamation, the publication of any advice or report by the Director under this section shall be absolutely privileged.

#### **64B Duty of Secretary of State.**

When he has received advice under section 64A(3) in relation to a rule made under section 25A(4) or (5) or such as is mentioned in section 34(3A), the Secretary of State may, having considered—

- (a) that advice;
  - (b) whether the interests of justice require that there should be such a rule; and
  - (c) in relation to a rule made under section 25A(5), any relevant practice obtaining in the sheriff court,
- approve or refuse to approve the rule.

#### **64C Investigatory powers of the Director.**

- (1) For the purpose of investigating any matter under section 64A, the Director may by notice in writing—
  - (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person’s custody or under that person’s control; and

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- (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to him (within such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on the grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.
- (3) Subsections (5) to (8) of section 85 of the Fair Trading Act 1973 shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.

#### **64D Review of rules approved by the Secretary of State.**

- (1) Without prejudice to the power of the Council to review any rule made by them, where the Secretary of State has approved a rule under section 64B he may, and if so requested by the Lord President shall, require the Council to review its terms.
- (2) When they have reviewed a rule following a requirement made under subsection (1), the Council may revise the rule in the light of that review, and shall then submit the rule as revised or, if they have not revised it, as previously approved to the Lord President and the Secretary of State.
- (3) Where the Lord President and the Secretary of State are agreed that the terms of the rule as submitted to them are satisfactory, the Secretary of State shall approve the rule, and may direct the Council to bring it into force as soon as is practicable.
- (4) Where either the Secretary of State or the Lord President is of the view that any rule, as submitted to them, is not satisfactory, but they do not agree as to what the terms of the rule should be, the rule shall continue to have effect as previously approved.
- (5) Where the Secretary of State and the Lord President agree both that any rule submitted to them under subsection (2) is not satisfactory, and as to what the terms of the rule should be, the Secretary of State may direct the Council—
- (a) to amend the rule in such manner as he and the Lord President consider appropriate; and
  - (b) to bring the rule, as so amended, into force as soon as is practicable.
- (6) The provisions of sections 64A and 64B apply to rules submitted to the Secretary of State under this section as they apply to rules submitted to him under sections 25A(9) or (10) and 34(3A).”

#### **Commencement Information**

**I30** S. 43 wholly in force at 3.6.1991 see s. 75(2) and S.I. 1991/1252, art. 3, Sch. 1

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#### 44 Interpretation of Part II.

In this Part of this Act, unless the context otherwise requires—

- “advocate” means a member of the Faculty of Advocates practising as such;
- “the Director” means the Director General of Fair Trading;
- “Lord President” means the Lord President of the Court of Session;
- “solicitor” has the same meaning as in section 65(1) of the 1980 Act; and
- “the 1980 Act” means the <sup>M25</sup>Solicitors (Scotland) Act 1980.

#### Commencement Information

**I31** S. 44 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Sch.

#### Marginal Citations

**M25** 1980 c. 46.

### PART III

#### THE LICENSING (SCOTLAND) ACT 1976

##### *Times of opening*

#### 45 Permitted hours.

- (1) For section 53 of the <sup>M26</sup>Licensing (Scotland) Act 1976 (in this Part of this Act referred to as “the principal Act”) there shall be substituted the following section—

**“53 Permitted hours in licensed premises and registered clubs.**

- (1) Subject to the provisions of this Act, the permitted hours in licensed premises, licensed canteens and registered clubs shall be—
- (a) for days other than Sundays, the period between eleven in the morning and eleven in the evening; and
  - (b) for Sundays, the period between half-past twelve and half-past two in the afternoon and the period between half-past six and eleven in the evening.
- (2) Nothing in this section shall authorise the sale or supply of alcoholic liquor for consumption off the premises, being premises in respect of which a refreshment licence, an entertainment licence, a restricted hotel licence, a restaurant licence or a licence under Part III of this Act is in force.”
- (2) In section 56 of that Act (permitted hours in certain clubs)—
- (a) for subsection (1) there shall be substituted the following subsection—
- “(1) A registered club may apply to the sheriff for an order providing that during the winter period the permitted hours in the club on Sundays shall not be those set out in section 53 of this Act, but shall instead be the period between half-past twelve and two in the afternoon and the period between four and nine in the evening; and the sheriff shall,

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if in his opinion the conditions set out in subsection (2) below are satisfied, make the order applied for.”; and

(b) in subsection (2)(d), for the words “section 53(3)” there shall be substituted the words “ section 53 ”.

(3) In subsection (2) of section 57 of that Act (extension of permitted hours in the afternoon in certain premises), after “afternoon” there shall be inserted the words “ on Sundays ”.

#### Marginal Citations

M26 1976 c. 66.

## 46 Sunday opening of licensed premises.

(1) The amendment by section 45 of this Act of section 53 of the principal Act shall not permit the opening for the sale or supply of alcoholic liquor during the permitted hours on a Sunday of premises for which there is in force a public house licence or a refreshment licence unless—

(a) the grant, provisional grant or renewal of such licence was in response to an application which stated that it was the intention of the applicant that the premises should be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday; or

(b) before such a licence has been renewed, the licensing board has granted an application for Sunday opening in respect of the premises in accordance with the provisions of Schedule 4 to the principal Act,

and, subject to subsection (8) below, the said Schedule 4 shall continue to have effect until all such licences in force at the commencement of this Act have been renewed or have ceased to have effect.

(2) In section 10 of the principal Act (applications for licences)—

(a) after subsection (3) there shall be added the following subsection—

“(3A) In the case of an application for the grant, the provisional grant or the renewal of a public house licence or a refreshment licence, the application shall state whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.”; and

(b) after subsection (7) there shall be added the following subsection—

“(8) A notice as mentioned in subsection (2) above and notice under subsection (5) above shall include a statement as to whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.”.

(3) In section 12 of that Act (publication of list of applications), at the end of subsection (2), there shall be added the following paragraph—

“(f) in the case of an application for a public house licence or a refreshment licence, whether the applicant intends the premises to be open for the sale or supply of alcoholic liquor during the permitted hours on a Sunday.”.

(4) In section 17 of that Act (grounds for refusal of application)—

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- (a) after subsection (2) there shall be inserted the following subsection—
- “(2A) A licensing board shall refuse to grant or renew a public house or a refreshment licence in respect of the permitted hours on a Sunday if it finds that the opening and use on a Sunday of the premises to which the application relates would cause undue disturbance or public nuisance in the locality, but the refusal of an application on that ground alone shall not prevent the licensing board from granting the application in respect of days other than Sundays.”
- (b) in subsection (4), after the words “transfer the licence” there shall be inserted the words “or to grant the licence in respect of the permitted hours on a Sunday”.
- (5) In section 59 (restaurants in public houses to have permitted hours on Sundays), for the words “an application for Sunday opening has not been granted under Schedule 4 to this Act” there shall be substituted the words “there are no permitted hours on a Sunday”.
- (6) In section 60 (other extensions of permitted hours on Sundays), for the words “an application for Sunday opening has been granted under Schedule 4 to this Act” there shall be substituted the words “there are permitted hours on Sundays in accordance with section 53 of this Act”.
- (7) In section 64 (extensions to permitted hours), for subsection (4) there shall be substituted the following subsections—
- “(4) A licensing board shall not grant an application from the holder of a public house licence for an occasional or regular extension of permitted hours on Sundays except—
- (a) as respects premises to which section 59 of this Act applies and for the purposes of that section; and
- (b) in the case of other premises, as respects any period or periods after half-past two in the afternoon,
- and the board shall refuse to grant such an application if it finds that the extension of permitted hours would cause undue disturbance or public nuisance in the locality.
- (4A) Nothing in subsection (4)
- above shall prevent the granting of an application for an occasional or regular extension of permitted hours on a Saturday for a period which continues into Sunday morning.”
- (8) In Schedule 4 to the principal Act (provision for Sunday opening of premises with a public house or refreshment licence)—
- (a) in paragraph 1, the words “as mentioned in section 53(2) of this Act” shall cease to have effect;
- (b) in paragraph 15, the words “or 12 above” shall cease to have effect;
- (c) after paragraph 15 there shall be inserted the following paragraph—
- “15A
- If an application for renewal of a public house licence or a refreshment licence includes a statement that the applicant intends that the premises should be open for the sale or supply of alcoholic liquor

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during the permitted hours on a Sunday and if there is currently in force the grant of an application for Sunday opening, that grant shall continue to have effect—

- (a) until the renewal application is granted by the board;
  - (b) if the renewal application is refused by the board, or refused in respect of Sunday opening, until the time within which an appeal may be made has elapsed, or if an appeal has been lodged, until the appeal has been abandoned or determined.”; and
  - (d) paragraphs 12 to 14, 16 and 17 shall cease to have effect.
- (9) Expressions used in this section and in the principal Act shall have the same meaning as in that Act.

#### **47 Regular extensions of permitted hours.**

- (1) A licensing board shall not grant an application under section 64 of the principal Act for an extension of permitted hours unless it is satisfied by the applicant, taking account of the factors mentioned in subsection (3) of that section—
- (a) that there is a need in the locality in which the premises in respect of which the application is made are situated for a regular extension of the permitted hours; and
  - (b) that such an extension is likely to be of such benefit to the community as a whole as to outweigh any detriment to that locality.
- (2) In determining whether to grant an application for a regular extension to permitted hours in respect of any premises it shall not be a relevant consideration for the licensing board to have regard to whether any application relating to any other premises in its area has, at any time, been granted or refused or the grounds on which any such application has been granted or refused.
- (3) Expressions used in this section and in the principal Act shall have the same meaning as in that Act.

#### **48 Restriction orders.**

- (1) Section 65 of the principal Act (restriction on the permitted hours) shall be amended in accordance with the following provisions of this section.

- (2) For subsection (1) there shall be substituted the following subsections—

“(1) Where, on a complaint being made to a licensing board by any person mentioned in section 16(1) of this Act in respect of any licensed premises or registered club, the board is satisfied that—

- (a) the sale or supply of alcoholic liquor in the afternoon or in the evening in licensed premises or in a registered club is the cause of undue public nuisance or constitutes a threat to public order or safety; or
- (b) the use of licensed premises is the cause of undue disturbance or public nuisance having regard to the way of life in the locality on a Sunday,

the board may make an order, in this section referred to as an “afternoon restriction order” or “evening restriction order” in the case of the grounds mentioned in paragraph (a) above or as a “Sunday restriction order” in the

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case of the grounds mentioned in paragraph (b) above; and, in this section, “restriction order” includes any such order.

- (1A) The effect of an afternoon restriction order is that the permitted hours between half-past two and five in the afternoon shall be reduced by such a time and for such a period as may be specified in the order.
  - (1B) The effect of an evening restriction order is that the permitted hours in the evening shall be reduced by such a time and for such a period as may be specified in the order but no such order shall restrict the permitted hours before ten in the evening.
  - (1C) The effect of a Sunday restriction order is that there shall be no permitted hours on Sunday for such period as may be specified in the order or that the permitted hours on Sunday shall be reduced by such a time and for such a period as may be so specified.”
- (3) At the end of subsection (3) there shall be inserted the words “ provided that no restriction order shall be made in respect of premises in respect of which no complaint has been made ”.

#### *Children’s certificates*

#### **49 Children’s certificates.**

- (1) The holder of a public house licence or an hotel licence in respect of any premises or an applicant for the grant, provisional grant or renewal of such a licence may apply to the licensing board, in accordance with this section, for the grant of a children’s certificate in respect of the premises or any part or parts of the premises specified in the application for the certificate.
- (2) A licensing board may grant a certificate (in this section and section 50 of this Act referred to as a “children’s certificate”) in respect of any premises or, as the case may be, part or parts of any premises if it is satisfied—
  - (a) that the premises or, as the case may be, the part or parts of the premises constitute an environment in which it is suitable for children to be present; and
  - (b) that there will be available for sale or supply for consumption in the part of the premises in respect of which the certificate is to apply meals and beverages other than alcoholic liquor within the meaning of the principal Act.
- (3) Where a children’s certificate is in force in respect of any part of any premises, notwithstanding section 69 of the principal Act, and, subject to the provisions of this section, it shall be lawful for a person under 14 years of age accompanied by a person of not less than 18 years of age to be present in such part at any time when the premises are open to the public between eleven in the morning and eight in the evening for the purpose of the consumption of a meal sold or supplied on the premises.
- (4) When granting a children’s certificate, the licensing board may attach such conditions to the grant of the certificate, including conditions restricting the hours during which and days on which children may be present in any premises or part of premises to which the certificate relates, as appear to the board to be appropriate.



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- (5) There shall be displayed at all times in any premises or part of such premises to which a children's certificate applies a notice of the fact that a children's certificate has been granted in respect of such premises or part.
- (6) Any person who is the holder of a licence in respect of any premises to which or part of which a children's certificate applies or any employee or agent of such a person who contravenes this section or any condition attached to a children's certificate shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) The following provisions of the principal Act shall apply as regards an offence under subsection (6) above—
  - (a) subsections (2) and (3) of section 67, as if an entry relating to that offence appeared respectively in columns 3 and 4 of Schedule 5 to that Act; and
  - (b) section 71.
- (8) Schedule 5 to this Act shall have effect as regards the procedure to be followed for the purposes of an application for a children's certificate.
- (9) A children's certificate shall be valid—
  - (a) where it is granted at the same time as the grant, provisional grant or renewal of a licence, for the period of the licence;
  - (b) where it is granted at any other time, until the end of the period for which the licence to which it relates has effect in pursuance of section 30 of the principal Act.
- (10) Where a licence is transferred in pursuance of section 25 of the principal Act, any children's certificate in respect of the premises or any part of the premises to which the licence relates shall be transferred to the new licence holder subject to the same conditions as were applied to the original grant of the certificate.
- (11) Expressions used in this section and section 50 of this Act and in the principal Act shall have the same meaning as in the principal Act.

## **50 Suspension of children's certificate.**

- (1) Where a licensing board considers that the premises or part of the premises to which a children's certificate relates no longer constitute an environment in which it is suitable for children to be present they shall decide whether or not to hold a hearing for the purpose of determining whether to suspend the certificate.
- (2) Where the licensing board decides to hold a hearing as mentioned in subsection (1) above—
  - (a) the clerk of the board shall serve on the holder of the children's certificate, not less than 21 days before the hearing, a notice that the board proposes to hold a hearing, specifying the grounds upon which suspension of the certificate may be made;
  - (b) the clerk of the board shall give notice of the hearing to the chief constable;
  - (c) the chief constable may, not less than 7 days before the hearing, lodge notice with the clerk of the board that he wishes to be heard in support of suspension of the children's certificate specifying the grounds on which he seeks such suspension, and any such notice shall be intimated by the chief constable to the holder of the licence;

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- (d) the board shall not order suspension of a children’s certificate without hearing the holder thereof unless, after receiving due notice of the hearing, the holder fails to appear.
- (3) The period of the suspension of a children’s certificate under this section shall be a fixed period not exceeding one year or the unexpired portion of the duration of the certificate, whichever is the less, and the effect of the suspension is that the certificate shall cease to have effect during the period of the suspension.
- (4) Where
  - (a) a children’s certificate has been suspended under this section, or further suspended under this subsection; and
  - (b) it appears to the licensing board that the grounds upon which the suspension or further suspension was made continue to obtain,
 the licensing board may, not more than one month before the expiry of the period of the suspension or, as the case may be, further suspension, determine that the suspension shall be continued for a further period of not more than one year, and this section shall have effect as regards any such further suspension as it has for the purposes of an initial suspension.

#### *Transfer of licences*

### **51 Transfer of licences.**

- (1) In section 5 of the principal Act (arrangements for discharge of functions by licensing boards), at the end of subsection (2) there shall be added the following paragraph—
  - “(m) confirming, under section 25(4) of this Act, the transfer of a licence transferred by virtue of subsections (2) or (3) of that section.”
- (2) In subsection (1) of section 25 of that Act (transfer of licences)—
  - <sup>F19</sup>(a) .....
  - (b) after “or” there shall be inserted the words “ to a new or existing ”.
- <sup>F19</sup>(3) .....
- (4) For subsection (4) of that section there shall be substituted the following subsections—
  - “(4) A licence transferred by virtue of subsection (2) or (3) above shall have effect until the next meeting of the licensing board, which, on an application for confirmation of the transfer of the licence, shall consider whether it is satisfied that the person to whom the licence has been transferred is a fit and proper person to be the holder of a licence and—
    - (a) if it is so satisfied, it shall confirm the transfer of the licence; and;
    - (b) if it is not so satisfied, it shall refuse to confirm the transfer.
  - (4A) In considering the fitness of the person to whom the licence has been transferred, the licensing board may have regard to any misconduct on his part, whether or not constituting a breach of this Act or any byelaw made thereunder, which in its opinion has a bearing on his fitness to hold a licence.
  - (4B) If the transfer of a licence has been confirmed under subsection (4)
    - above, the licence shall have effect, in accordance with subsections (4) and (5) of section 30 of this Act, until the quarterly meeting of the licensing board

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three years after the meeting at which the licence was originally granted or renewed by a licensing board.

(4C) If a licensing board refuses to confirm the transfer of a licence under subsection (4) above, the person to whom the licence had been transferred may appeal to the sheriff against that refusal and the licence shall have effect until the time within which an appeal may be made has elapsed or, if an appeal has been lodged, until the appeal has been abandoned or determined.”

(5) In section 64 of that Act (occasional and regular extensions of permitted hours), after subsection (3) there shall be inserted the following subsection—

“(3A) Where a licence has been transferred by virtue of section 25 of this Act and an application under subsection (1) above has been granted under subsection (2) or (3) above to the previous holder of the licence, the reference in subsections (2) and (3) above to the person whose application has been granted shall include a reference to the person to whom the licence has been transferred.”

(6) For subsection (7) of that section there shall be substituted the following subsection—

“(7) References in this Act to the permanent transfer of a licence shall be construed as references to the transfer of a licence by virtue of subsection (1B) above.”

#### Textual Amendments

**F19** S. 51(2)(a) and (3) repealed (15.4.1992) by Licensing (Amendment)(Scotland) Act 1992 (c. 18), s. 1(3); S.I. 1992/819, art.3, 4

### *Wholesale selling of alcoholic liquor*

## **52 Wholesale selling of alcoholic liquor.**

(1) After section 90 of the principal Act there shall be inserted the following section—

### **“90A Wholesale selling of alcoholic liquor.**

- (1) A wholesaler or his employee or agent who barter, sells, or exposes or offers for sale alcoholic liquor shall be guilty of an offence unless—
  - (a) he does so from premises which are used exclusively for wholesale trading (whether solely of alcoholic liquor or not); or
  - (b) he does so from licensed premises, a licensed canteen or a registered club during the hours in respect of which it is lawful to sell alcohol by retail from or in these premises, that canteen or that club.
- (2) A wholesaler or his employee or agent who sells alcoholic liquor to a person under 18 shall be guilty of an offence.
- (3) A wholesaler or his employee or agent who causes or permits a person under 18 to sell alcoholic liquor without that sale having been specifically approved by a person of or over 18 shall be guilty of an offence.

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- (4) Section 67 of this Act (penalties for offences) shall apply in respect of offences under this section as if references in that section to a licence-holder were references to a wholesaler.
- (5) Section 71 of this Act (defence of due diligence) shall apply to any person charged with an offence under this section as if the reference in that section to a licence-holder were a reference to a wholesaler.
- (6) In this section—  
“licence-holder” includes the holder of a licence under Part III of this Act; and  
“wholesale” and “wholesaler”, insofar as they relate to the sale of alcoholic liquor, have the meaning given in section 4(1) of the Alcoholic Liquor Duties Act 1979 in relation to dealing in alcoholic liquor.”

- (2) In Schedule 5 to that Act, after the entry relating to section 90(c) there shall be inserted—

“Section 90A(1)	Dealing wholesale other than from permitted premises	Yes	level 5 on the standard scale.
Section 90A(2)	Wholesaler selling liquor to person under 18	Yes	level 3 on the standard scale.
Section 90A(3)	Wholesaler permitting person under 18 to sell alcohol without approval	Yes	level 1 on the standard scale.”

*Observations by Chief Constable*

**53 Observations by chief constable in relation to applications.**

- (1) After section 16 of the principal Act (objections in relation to applications), there shall be inserted the following section—

**“16A Observations by chief constable in relation to applications.**

- (1) Without prejudice to section 16 of this Act, in considering an application—
- (a) for the grant (including the provisional grant), renewal or permanent transfer of a licence;
  - (b) the regular extension of permitted hours under section 64 of this Act; or
  - (c) the grant of a children’s certificate under section 49 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,

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a licensing board shall have regard to any observations on the application submitted by the chief constable in accordance with the following provisions of this section.

(2) Where the chief constable intends to submit observations in relation to any application, he shall, not later than seven days before the meeting of the licensing board at which the application is to be considered—

- (a) lodge with the clerk of the board a written notice of his observations; and
- (b) intimate his observations to the applicant in the manner provided by subsection (3) below,

and observations shall not be entertained by the licensing board unless it is proved or admitted that such observations were intimated to the applicant as aforesaid.

(3) Observations shall, for the purposes of paragraph (b) of subsection (2) above, be intimated to the applicant—

- (a) by delivering to him a copy of the observations lodged with the licensing board under paragraph (a) of that subsection; or
- (b) by sending him a copy of the said observations by registered post or by recorded delivery in a letter addressed to him at his proper address; or
- (c) by leaving a copy of the said observations for him at his proper address;

and, for the purposes of paragraphs (b) and (c) of this subsection, the proper address of an applicant shall be as provided for in subsection (3) of section 16 of this Act.

(4) Notwithstanding anything in the foregoing provisions of this section, it shall be competent for the licensing board to entertain observations from the chief constable, lodged at any time before the hearing of an application, if the board is satisfied that there is sufficient reason why due notice and intimation of the observations could not be given, and in such a case the chief constable shall cause his observations to be intimated to the applicant before the hearing.

(5) The licensing board shall have regard to any observations submitted by the chief constable in accordance with this section whether or not they are relevant to one or more grounds on which, by virtue of section 17 of this Act, an application may be refused.”

(2) In section 31 of that Act (suspension of licences), after subsection (5) there shall be inserted the following subsection—

“(5A) Where the licensing board decides to hold a hearing as mentioned in subsection (4) above in respect of a complaint under this section which was made by a person or body other than the chief constable, the chief constable may, not less than 7 days before the hearing, lodge with the clerk of the board observations in respect of the proposed suspension of the licence, and any such observations shall be intimated by the chief constable to the holder of the licence.”

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*Supervision of sales by persons over 18*

**54 Supervision of sales of liquor in off-sale premises by persons 18 or over.**

(1) After section 97 of the principal Act there shall be inserted the following section—

**“97A Supervision of sales of liquor in off-sale premises.**

A holder of a licence in respect of—

- (a) any off-sale premises; or
- (b) the off-sale part of any other premises,

or any employee or agent of his, who causes or permits a person under 18 to sell on these premises alcoholic liquor without that sale having been specifically approved by the licence holder or by a person of or over 18 acting on his behalf shall be guilty of an offence.”

(2) In section 71 of that Act (defence of due diligence), for the words “or 70” there shall be substituted the words “, 70 or 97A ”.

(3) In Schedule 5 to that Act, after the entry relating to section 97(4) there shall be inserted—

“Section 97A	Permitting person under 18 to sell alcohol without approval	Yes	Yes	level 3 on the standard scale.”
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*Presumption as to contents of containers*

**55 Presumption as to contents of containers.**

(1) In section 127 of the principal Act (presumptions as to the contents of containers) for subsections (2) to (6) there shall be substituted the following subsections—

“(2) Any liquid found in a container (sealed or open) shall, subject to the provisions of this section, be presumed to conform to the description of the liquid on the container.

(3) An open container which is found to contain—

- (a) no liquid; or
- (b) insufficient liquid to permit analysis,

but which when sold or supplied to a person was sealed shall, subject to the provisions of this section, be presumed to have contained at the time of the sale or supply liquid which conformed to the description of the liquid on the container.

(4) Subject to subsection (5) below, in any trial of a person for an offence under this Act, he may rebut the presumption mentioned in subsection (2) or (3) above by showing that, at the time of the sale or supply, the liquid in the container did not conform to the description of the liquid on the container.

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- (5) A person shall not be entitled to lead evidence for the purpose of rebutting a presumption as mentioned in subsection (4) above unless, not less than 7 days before the date of the trial, he has given notice to the prosecutor of his intention to do so.”
- (2) Nothing in this section shall apply to the prosecution of any person for an offence committed before the commencement of this section.

## PART IV

### MISCELLANEOUS REFORMS

PROSPECTIVE

#### *Evidence by children in criminal trials*

**F20** **56** .....

#### **Textual Amendments**

**F20** S. 56 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3** para. 1)

**F21** **57** .....

#### **Textual Amendments**

**F21** S. 57 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3** para. 1)

#### **58 Identification of accused by child.**

Where a court has, or is deemed to have, granted an application made under section 56 of this Act in relation to a child <sup>F22</sup>. . ., and the child gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the child prior to the trial shall be admissible as evidence as to such identification.

#### **Textual Amendments**

**F22** Words in s. 58 repealed (31.3.1996) by 1995 c. 20, s. 117(1)(2), **Sch. 6** paras. 174, 176, **Sch. 7 Pt. I**; S.I. 1996/517, **art. 3(2)**

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

**C5** S. 58 applied (1.1.1994) by 1993 c. 9, **s. 35** (with s. 47(2), **Sch. 6** paras. 1, 2); S.I. 1993/2050, **art. 3(5)**.

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#### Commencement Information

**I32** S. 58 wholly in force 3.4.1997; s. 58 not in force at Royal Assent see 75(2); s. 58 in force for certain purposes at 30.9.1991 by S.I. 1991/2151, art. 3, Sch.; s. 58 in force at 3.4.1995 in so far as not already in force by S.I. 1995/364, art. 2

#### 59 Interpretation of sections 56, 57 and 58.

In sections 56, 57 and 58 of this Act, unless the contrary intention appears—  
 “child” means a person under the age of 16 years;  
 “court” means the High Court of Justiciary or the sheriff court; and  
 “trial” means a trial under solemn or under summary procedure.

#### Commencement Information

**I33** S. 59 wholly in force 3.4.1995; s. 59 not in force at Royal Assent see s. 75(2); s. 59 in force for certain purposes at 30.9.1991 by S.I. 1991/2151, art. 3, Sch.; s. 59 in force at 3.4.1995 in so far as not already in force by 1995/364, art. 2

PROSPECTIVE

### *Sheriff court jurisdiction*

#### 60 Criminal jurisdiction of sheriff court.

The following subsection shall be inserted at the end of each of sections 3 and 288 of the <sup>M27</sup>Criminal Procedure (Scotland) Act 1975 to form subsection (4) and subsection (5) respectively of these sections—

“(0) Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.”

#### Commencement Information

**I34** s. 60 wholly in force on 30.09.1991 see s. 75(2) and S.I. 1991/2151, art. 3, Sch.

#### Marginal Citations

**M27** 1975 c. 21.

### *Treatment of offenders*

#### 61 Probation and community service orders and supervision and care of persons on probation or released from prison etc.

(1) Sections 183 and 384 of the <sup>M28</sup>Criminal Procedure (Scotland) Act 1975 (probation) shall be amended as follows—



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- (a) at the beginning of subsection (1) of each section there shall be inserted “ Subject to subsection (1A) below, ”;
  - (b) after subsection (1) of each section there shall be inserted the following subsection—
    - “(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made by the local authority in whose area he resides or is to reside.”; and
  - (c) in subsection (4) of each section—
    - (i) for the words “necessary for” there shall be substituted “ conducive to ”; and
    - (ii) for the word “for” in the second place where it occurs there shall be substituted “ to ”.
- (2) In subsection (1) of each of sections 186 and 387 of that Act (failure to comply with probation order)—
- (a) after the word “from” there shall be inserted “ (a) ”; and
  - (b) after the word “probationer” where it first occurs there shall be inserted—
    - “(b) the director of social work of the local authority whose officer is supervising the probationer; or
    - (c) an officer appointed by the director of social work to act on his behalf for the purposes of this subsection.”.
- (3) In section 1(1) of the <sup>M29</sup>Community Service by Offenders (Scotland) Act 1978 (community service orders), for the words “dealing with him in any other way” there shall be substituted “ imposing on him a sentence of, or including, imprisonment or any other form of detention ”.
- (4) In section 27 of the <sup>M30</sup>Social Work (Scotland) Act 1968 (supervision and care of persons on probation or released from prison etc)—
- (a) at the end of subsection (1) there shall be added—
    - “; and
    - (c) the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance.”; and
  - (b) after paragraph (a) of subsection (3) there shall be inserted the following paragraph—
    - “(aa) the matters to be included in such a report.”.
- (5) In section 27A of that Act (grants in respect of community service facilities)—
- (a) at the beginning there shall be inserted “ (1) ”; and
  - (b) for the words from “for the purposes” to the end there shall be substituted—
    - “(a) for the purposes mentioned in section 27(1) of this Act; and
    - (b) for such other similar purposes as the Secretary of State may prescribe.
- (2) Before exercising his power under subsection (1)(b) above the Secretary of State shall consult local authorities and such other bodies as he considers appropriate.”.

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(6) In section 27B of that Act (grants in respect of hostel accommodation for certain persons)—

- (a) at the beginning there shall be inserted “ (1) ”; and
- (b) for the words from “sub-paragraphs (i) and (ii)” to the end there shall be substituted—

“subsection (2) below.

(2) The persons referred to in subsection (1) above are—

- (a) persons mentioned in section 27(1)(b)(i) and (ii) of this Act;
- (b) persons who have been charged with an offence and are on bail;
- (c) persons who have been released from prison or any other form of detention but do not fall within section 27(1)(b)(ii) of this Act; and
- (d) such other classes of persons as the Secretary of State may prescribe.

(3) Before exercising his power under subsection (2)(d) above the Secretary of State shall consult local authorities and such other persons as he considers appropriate.”.

(7) In section 94(1) of that Act (interpretation), in paragraph (c) of the definition of “prescribed”, after the word “sections” there shall be inserted “ 27A, 27B, ”.

#### Commencement Information

**I35** S. 61 wholly in force at 1.4.1991. See s. 75(2) and S.I. 1991/850, art. 3, Schedule.

#### Marginal Citations

**M28** 1975 c. 21.  
**M29** 1978 c. 49.  
**M30** 1968 c. 49.

<sup>F23</sup> 62 .....

#### Textual Amendments

**F23** S. 62 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 para. 1)

### *Drug trafficking confiscation orders*

#### **63 Registration and enforcement of external confiscation orders.**

The following sections shall be substituted for section 30 of the <sup>M31</sup>Criminal Justice (Scotland) Act 1987—

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### **“30 Enforcement of other external orders.**

- (1) Her Majesty may by Order in Council—
  - (a) direct in relation to a country or territory outside the United Kingdom designated by the order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
  - (b) make—
    - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and
    - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 30A of this Act; and
    - (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and
  - (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this Part of this Act—

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and

“modifications” includes additions, alterations and omissions.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.
- (5) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

### **30A Registration of external confiscation orders.**

- (1) On an application made by or on behalf of the Government of a designated country, the Court of Session may register an external confiscation order made there if—
  - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
  - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

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- (c) it is of the opinion that enforcing the order in Scotland would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
  - (a) any proceedings by way of discharging or setting aside a judgment; and
  - (b) an application for a new trial or a stay of execution.
- (3) The Court of Session shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.”

#### Marginal Citations

M31 1987 c. 41.

### *Matrimonial interdicts*

#### 64 Matrimonial interdicts.

In section 15 of the <sup>M32</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981 (powers of arrest attached to matrimonial interdicts)—

- (a) in subsection (2), after the words “such interdict” there shall be inserted “together with the attached power of arrest ”; and
- (b) in subsection (4)—
  - (i) after the word “interdict” in the second place where it occurs there shall be inserted “ together with the attached power of arrest ”; and
  - (ii) at the end there shall be added “ and, where the application to attach the power of arrest to the interdict was made after the interdict was granted, a copy of that application and of the interlocutor granting it and a certificate of service of the interdict together with the attached power of arrest ”.

#### Marginal Citations

M32 1981 c. 59.

### *Homelessness*

#### 65 Homelessness.

- (1) Section 24 of the <sup>M33</sup>Housing (Scotland) Act 1987 (definition of homelessness and persons threatened with homelessness) shall be amended as follows.
- (2) After subsection (2) there shall be inserted the following subsections—
  - “(2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

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(2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.”

(3) In subsection (3), after paragraph (b) there shall be inserted—

“(bb) it is probable that occupation of it will lead to—

(i) violence; or

(ii) threats of violence which are likely to be carried out,

from some other person who previously resided with that person, whether in that accommodation or elsewhere, or”.

#### Marginal Citations

M33 1987 c. 26.

### *Arbitration*

## **66 UNCITRAL Model Law on International Commercial Arbitration.**

- (1) In this section, “the Model Law” means the UNCITRAL Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on 21st June 1985.
- (2) The Model Law shall have the force of law in Scotland in the form set out in Schedule 7 to this Act (which contains the Model Law with certain modifications to adapt it for application in Scotland).
- (3) The documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the Model Law may be considered in ascertaining the meaning or effect of any provision of the Model Law as set out in Schedule 7 to this Act.
- (4) The parties to an arbitration agreement may, notwithstanding that the arbitration would not be an international commercial arbitration within the meaning of article 1 of the Model Law as set out in Schedule 7 to this Act, agree that the Model Law as set out in that Schedule shall apply, and in such a case the Model Law as so set out shall apply to that arbitration.
- (5) Subsection (4) above is without prejudice to any other enactment or rule of law relating to arbitration.
- (6) Subject to subsections (7) and (8) below, this section shall apply in relation to an arbitration agreement whether entered into before or after the date when this section comes into force.
- (7) Notwithstanding subsection (6) above, this section shall not apply with respect to any arbitration which has commenced but has not been concluded on the date when this section comes into force.

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- (8) The parties to an arbitration agreement entered into before the date when this section comes into force may agree that the foregoing provisions of this section shall not apply to that arbitration agreement.

### *Judicial factors*

#### **67 Further provision as to discharge of judicial factors.**

After section 34 (discharge of factors, tutors and curators) of the <sup>M34</sup>Judicial Factors Act 1849 there shall be inserted the following section—

##### **“34A Further provision as to discharge of factors, tutors and curators.**

The Court may by act of sederunt make provision for the discharge of factors, tutors and curators by means other than the presentation of a petition under section 34 of this Act where the factory, tutory or curatory is terminated by reason of the recovery, death or coming of age of the ward, or by reason of the exhaustion of the estate.”.

#### **Marginal Citations**

**M34** 1849 c. 51.

### *Avoidance of civil liability by non-contractual notice*

#### **68 Amendment of Unfair Contract Terms Act 1977.**

- (1) The <sup>M35</sup>Unfair Contract Terms Act 1977 shall be amended in accordance with this section.
- (2) In section 15(1) (scope of Part II), the words “applies only to contracts,” shall cease to have effect.
- (3) In section 16 (liability for breach of duty)—
- (a) in subsection (1)—
    - (i) at the beginning there shall be inserted the words “ Subject to subsection (1A) below, ”;
    - (ii) after the word “contract” in the first place where it occurs there shall be inserted “ , or a provision of a notice given to persons generally or to particular persons, ”;
    - (iii) after the word “term” in the second place where it occurs there shall be inserted “ or provision ”; and
    - (iv) at the end of paragraph (b) there shall be inserted the words “ or, as the case may be, if it is not fair and reasonable to allow reliance on the provision ”;
  - (b) after subsection (1) there shall be inserted the following subsection—
 

“(1A) Nothing in paragraph (b)

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- of subsection (1) above shall be taken as implying that a provision of a notice has effect in circumstances where, apart from that paragraph, it would not have effect.”; and
- (c) in subsection (3)—
- (i) after the word “contract” there shall be inserted “ or a provision of a notice ”; and
- (ii) after the word “term” in the second place where it occurs there shall be inserted “ or provision ”.
- (4) In section 24 (the “reasonableness” test)—
- (a) after subsection (2) there shall be inserted the following subsection—
- “(2A) In determining for the purposes of this Part of this Act whether it is fair and reasonable to allow reliance on a provision of a notice (not being a notice having contractual effect), regard shall be had to all the circumstances obtaining when the liability arose or (but for the provision) would have arisen.”;
- (b) in subsection (3)—
- (i) after the word “contract” in the first place where it occurs there shall be inserted “ or a provision of a notice ”;
- (ii) after the word “contract” in the second place where it occurs there shall be inserted “ or whether it is fair and reasonable to allow reliance on the provision ”;
- (iii) after the word “above” there shall be inserted “ in the case of a term in a contract ”; and
- (iv) in paragraph (a), after the word “term” there shall be inserted “ or provision ”; and
- (c) in subsection (4), after the word “contract” there shall be inserted “ or that it is fair and reasonable to allow reliance on a provision of a notice ”.
- (5) In section 25 (interpretation of Part II)—
- (a) in subsection (1), after the definition of “hire-purchase agreement” there shall be inserted—
- “ “notice” includes an announcement, whether or not in writing, and any other communication or pretended communication;”;
- (b) subsections (3)(d) and (4) shall cease to have effect.
- (6) This section shall have effect only in relation to liability for any loss or damage which is suffered on or after the date appointed for its coming into force.

**Commencement Information**

**I36** S. 68 wholly in force at 1.4.1991 see s. 75 and S.I. 1991/330, art. 4, Sch.

**Marginal Citations**

**M35** 1977 c. 50.

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*Liability in respect of services to injured persons*

**69 Future services to injured person.**

- (1) For subsection (2) of section 8 of the <sup>M36</sup>Administration of Justice Act 1982 (services rendered to injured person) there shall be substituted the following subsections—
- “(2) The injured person shall be under an obligation to account to the relative for any damages recovered from the responsible person under subsection (1) above.
- (3) Where, at the date of an award of damages in favour of the injured person, it is likely that necessary services will, after that date, be rendered to him by a relative in consequence of the injuries in question, then, unless the relative has expressly agreed that no payment shall be made in respect of those services, the responsible person shall be liable to pay to the injured person by way of damages such sum as represents—
- (a) reasonable remuneration for those services; and
- (b) reasonable expenses which are likely to be incurred in connection therewith.
- (4) The relative shall have no direct right of action in delict against the responsible person in respect of any services or expenses referred to in this section.”
- (2) Without prejudice to Parts II and III of the <sup>M37</sup>Prescription and Limitation (Scotland) Act 1973, this section shall apply to rights accruing both before and after the date appointed for its coming into force, but shall not affect any proceedings commenced before that date.

**Commencement Information**

**I37** S. 69 wholly in force at 1.3.1991 see s. 75 and S.I. 1991/330, art. 3

**Marginal Citations**

**M36** 1982 c. 53.

**M37** 1973 c. 52.

*Blood and other samples in civil proceedings*

**70 Blood and other samples in civil proceedings.**

- (1) In any civil proceedings to which this section applies, the court may (whether or not on application made to it) request a party to the proceedings—
- (a) to provide a sample of blood or other body fluid or of body tissue for the purpose of laboratory analysis;
- (b) to consent to the taking of such a sample from a child in relation to whom the party has power to give such consent.
- (2) Where a party to whom a request under subsection (1) above has been made refuses or fails—
- (a) to provide or, as the case may be, to consent to the taking of, a sample as requested by the court, or



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- (b) to take any step necessary for the provision or taking of such a sample, the court may draw from the refusal or failure such adverse inference, if any, in relation to the subject matter of the proceedings as seems to it to be appropriate.
- (3) In section 6 of the <sup>M38</sup>Law Reform (Parent and Child) (Scotland) Act 1986 (determination of parentage by blood sample)—
  - (a) in subsection (1), for the words “blood sample” there shall be substituted “sample of blood or other body fluid or of body tissue”; and
  - (b) in each of subsections (2), (3) and (4), for the words “a blood” there shall be substituted “such a”.
- (4) This section applies to any civil proceedings brought in the Court of Session or the sheriff court—
  - (a) on or after the date of the commencement of this section; or
  - (b) before the said date in a case where the proof has not by that date begun.

**Marginal Citations**  
M38 1986 c. 9.

*Powers of attorney*

F24<sup>71</sup> .....

**Textual Amendments**  
F24 S. 71 repealed (2.4.2001) by 2000 asp 4, s. 88(3), Sch. 6; S.S.I. 2001/81, art. 2, Sch. 1

*Execution of documents by companies*

F25<sup>72</sup> .....

**Textual Amendments**  
F25 S. 72 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), Sch. 5 (with ss. 9(3)(5)(7), 13, 14(3))

**PART V**

GENERAL

**73 Finance.**

- (1) There shall be paid out of money provided by Parliament—
  - (a) the expenses of the Lord Advocate in carrying out his functions under Part I of this Act;

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- (b) the remuneration and expenses of the Scottish legal services ombudsman appointed under section 34 of this Act and of any staff appointed for the ombudsman under Schedule 3 to this Act;
  - (c) the remuneration of temporary judges appointed under section 35(3) of this Act;
  - (d) any grant paid by the Secretary of State to the Scottish Conveyancing and Executry Services Board under section 16 of this Act; and
  - (e) any increase attributable to the provisions of this Act in the sums payable under any other Act out of money provided by Parliament.
- (2) Sums repaid to the Secretary of State under section 16(3) of this Act shall be paid by him into the Consolidated Fund.

#### Commencement Information

**I38** S. 73 wholly in force; s. 73 not in force at Royal Assent see s. 75(2); s. 73(1)(b)-(e) in force at 1.4.1991 by S.I. 1991/822, art. 3, Sch.; s. 73(1)(a)(2) in force at 17.3.1993 by S.I. 1993/641, art. 3, Sch.

#### 74 Amendments and repeals.

- (1) The enactments mentioned in Schedule 8 to this Act shall have effect subject to the amendments specified in that Schedule.
- (2) The enactments mentioned in Schedule 9 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

#### Commencement Information

**I39** S. 74 partly in force; s. 74 in force at 1.1.1991 in so far as it relates to the provisions of Pt. III and s. 66 see s. 75(3)(a);  
S. 74(1) in force in relation to specified provisions of Sch. 8: at 1.12.1990 by S.I. 1990/2328, art. 3, Sch.; at 1.1.1991 by S.I. 1990/2624, art. 3, Sch.; at 1.4.1991 by S.I. 1991/822, art. 3, Sch.; at 3.6.1991 by S.I. 1991/1252, arts. 3, 4, Schs. 1, 2; at 26.8.1991 by S.I. 1991/1903, art. 3, Sch.; at 30.9.1991 by S.I. 1991/2151, art. 3, Sch.; at 31.12.1991 by S.I. 1991/2862, art. 3, Sch.; at 20.7.1992 by S.I. 1992/1599, art. 4, Sch. 2; at 17.3.1993 by S.I. 1993/641, art. 3, Sch.; at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2699, art. 2)  
S. 74(2) in force in relation to specified repeals in Sch. 9: at 1.12.1990 by S.I. 1990/2328, art. 3, Sch.; at 1.1.1991 by S.I. 1990/2624, art. 3, Sch.; at 1.4.1991 by S.I. 1991/330, art. 4, Sch.; at 3.6.1991 and at 15.8.1991 by S.I. 1991/1252, arts. 3, 4 Schs. 1, 2; at 26.8.1991 by S.I. 1991/1903, art. 3, Sch.; at 30.9.1991 by S.I. 1991/2151, art. 3, Sch.; at 17.3.1993 by S.I. 1993/641, art. 3, Sch.; at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2699, art. 2)

#### 75 Citation, commencement and extent.

- (1) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument and different days may be appointed for different provisions and for different purposes.

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- (3) The provisions of—
- (a) Part III and section 66 of this Act and so much of section 74 as relates to those provisions; and
  - (b) sections 67, 70 and 71 of this Act and paragraphs 21 and 34 of Schedule 8 to this Act,
- shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (4) Paragraph 27(3) of Schedule 8 to this Act shall come into force on the day on which this Act is passed.
- (5) Subject to subsections (6) and (7) below, this Act extends to Scotland only.
- <sup>F26</sup>(6) .....
- (7) Paragraph 17 of Schedule 1 to this Act, paragraph 11 of Schedule 3 to this Act and Schedule 9 to this Act so far as relating to the <sup>M39</sup>House of Commons Disqualification Act 1975 extend also to England and Wales and Northern Ireland.

#### Subordinate Legislation Made

- P1** S. 75(2) power exercised by S.I. 1990/2328 and 2624
- S. 75(2) power exercised: 1.3.1991 appointed for specified provisions by S.I. 1991/330
- S. 75(2) power exercised by S.I. 1991/822, 850, 1252
- S. 75(2): power exercised by S.I. 1991/1903.
- S. 75(2): power exercised by S.I. 1991/2151.
- S. 75(2) power partly exercised (19.12.1991): 31.12.1991 appointed for specified provisions by S.I. 1991/2862
- S. 75(2) power exercised (7.3.1992): different dates appointed for specified provisions by S.I. 1992/1599, **arts. 3-6**
- S. 75(2) power exercised (5.3.1993): 17.3.1993 appointed for specified provisions by S.I. 1993/641, art. 3, **Sch.**
- S. 75(2) power exercised (14.9.1993): 15.9.1993 appointed for specified provisions by S.I. 1993/2253, art. 2
- S. 75(2) power exercised (13.2.1995): 3.4.1995 appointed for specified provisions by S.I. 1995/364, **art. 2**
- S. 75(2) power exercised (6.11.1996): 1.3.1997 appointed for specified provisions by S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, **art. 2**)

#### Textual Amendments

- F26** S. 75(6) repealed (1.8.1995) by 1995 c. 7, s. 14(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

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

- C6** S. 75(2) extended (with modifications)(1.7.1989) by S.I. 1989/638, **regs. 20, 21**

#### Marginal Citations

- M39** 1975 c. 24.

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## SCHEDULES

### SCHEDULE 1

Sections 16 and 20.

#### SCOTTISH CONVEYANCING AND EXECUTRY SERVICES BOARD

#### PART I

#### CONSTITUTION, DUTIES, POWERS AND STATUS

##### *Constitution*

1 The Scottish Conveyancing and Executry Services Board shall be a body corporate.

##### **Commencement Information**

**I40** Sch. 1 Pt. I para. 1 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

2 The Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property shall not be regarded as property of, or held on behalf of, the Crown.

##### **Commencement Information**

**I41** Sch. 1 Pt. I para. 2 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

3 The Board shall consist of—  
 (a) a chairman; and  
 (b) not less than 6 nor more than 9 other members,  
 appointed by the Secretary of State.

##### **Commencement Information**

**I42** Sch. 1 Pt. I para. 3 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

4 In making appointments under paragraph 3 above the Secretary of State shall have regard to the desirability of securing—  
 (a) that members of the Board have expertise or knowledge of—  
 (i) the provision of conveyancing and executry services;  
 (ii) the financial arrangements connected with the purchase and sale of heritable property;  
 (iii) consumer affairs; and  
 (iv) commercial affairs; and

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- (b) that, so far as is reasonably practicable, the composition of the Board is such as to provide a proper balance between the interests of, on the one hand, qualified conveyancers and executry practitioners and, on the other hand, those who make use of their services.

#### Commencement Information

**I43** Sch. 1 Pt. I para. 4 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.

- <sup>F27</sup>5 (1) Subject to paragraph 6 below, a member of the Board shall hold and vacate office in accordance with his terms of appointment, but a person shall not be appointed a member of the Board for a period of more than 5 years.
- (2) A person who ceases to be a member of the Board shall be eligible for reappointment.

#### Textual Amendments

**F27** Sch. 1 Pt. I para. 5 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 6 (1) The chairman or any other member of the Board may resign office by giving notice in writing to the Secretary of State.
- (2) The Secretary of State may terminate the appointment of a member of the Board if satisfied that—
- (a) his estate has been sequestrated or he has made an arrangement with or granted a trust deed for his creditors;
  - (b) he is unable to carry out his duties as a Board member by reason of physical or mental illness;
  - (c) he is failing to carry out the duties of his appointment;
  - (d) he has been convicted of a criminal offence rendering him unsuitable to continue as a member; or
  - (e) he is otherwise unable or unfit to discharge the functions of a member of the Board.

#### Commencement Information

**I44** Sch. 1 Pt. I para. 6 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.

#### *Remuneration*

- 7 (1) The Board may—
- (a) pay such remuneration to their members; and
  - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of their members,
- as the Board may, with the consent of the Secretary of State, determine.
- (2) Where a person ceases to be a member of the Board otherwise than on the expiry of his term of office, and it appears to the Board that there are special circumstances which make it right for that person to receive compensation, the Board may, with the consent of the Secretary of State, make a payment to that person of such amount as the Board may, with the consent of the Secretary of State, determine.

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#### Commencement Information

**I45** Sch. 1 Pt. I para. 7 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Staff

- 8 The Board may employ such officers and servants as they think fit, on such terms as to remuneration and conditions of service as the Board may, with the consent of the Secretary of State, determine.

#### Commencement Information

**I46** Sch. 1 Pt. I para. 8 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 9 (1) The Board shall make, in respect of such of their employees as they may determine, such arrangements for providing pensions, allowances or gratuities (including pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of employment) as the Board may, with the consent of the Secretary of State, determine.
- (2) Arrangements under sub-paragraph (1) above may include the establishment and administration, by the Board or otherwise, of one or more pension schemes.

#### Commencement Information

**I47** Sch. 1 Pt. I para. 9 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Proceedings

- 10 (1) The Board may regulate their own proceedings.
- (2) The Board may make such arrangements as they consider appropriate for the discharge of their functions, including the delegation of specified functions other than their power to make rules.
- (3) The validity of any proceedings of the Board shall not be affected by any vacancy among the members of the Board or by any defect in the appointment of any member.

#### Commencement Information

**I48** Sch. 1 Pt. I para. 10 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Performance of functions

- 11 (1) Subject to the provisions of this Schedule, the Board may do anything—
- (a) which they consider necessary or expedient for securing the discharge of their functions; or
- (b) which is calculated to facilitate or is incidental or conducive to the discharge of their functions.

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- (2) Without prejudice to the generality of sub-paragraph (1) above, the Board shall have power—
- (a) to enter into any contract or agreement, including any contract or agreement to acquire or dispose of land;
  - (b) to invest and borrow money;
  - (c) to charge such fees as they may determine in respect of the discharge of their functions; and
  - (d) to apply sums received by them in respect of fees towards repayment of any grant made to them by virtue of section 16(2) of this Act.

**Commencement Information**

**I49** Sch. 1 Pt. I para. 11 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 12 Neither the Board nor any of their members, officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of their functions unless the act or omission is shown to have been in bad faith.

**Commencement Information**

**I50** Sch. 1 Pt. I para. 12 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.

*Accounts*

- 13 (1) The Board shall, in respect of each financial year, keep proper accounts and proper records in relation to the accounts.
- (2) The accounts shall be audited annually by auditors appointed by the Board.
- [<sup>F28</sup>(3) No person shall be appointed auditor under this paragraph unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989.]
- (4) The Board shall send a copy of the audited accounts for each financial year to every practitioner.
- (5) The Board shall, on receipt of such fee as they may determine, send a copy of the audited accounts to any person requesting it.
- (6) In this paragraph, “financial year” means the period of 12 months ending with 31st March in each year.

**Textual Amendments**

**F28** Words in Sch. 1 para. 13(3) substituted (1.10.1991) by S.I. 1991/1997, reg. 2, Sch. para. 75.

**Commencement Information**

**I51** Sch. 1 Pt. I para. 13 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.

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### *Annual report*

- 14 The Board shall, as soon as possible after 31st March in each year, submit a report to the Secretary of State on the exercise of their functions during the preceding 12 months, which the Secretary of State shall lay before each House of Parliament.

#### **Commencement Information**

**I52** Sch. 1 Pt. I para. 14 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.

### *Appeals*

- 15 (1) The Board shall establish a procedure under which they shall, on the application of any aggrieved person, review any relevant decision made by them.
- (2) In sub-paragraph (1) above—  
 “relevant decision” means—
- (a) a refusal to grant an application for registration as an executry practitioner or a qualified conveyancer;
  - (b) a decision to grant an application for registration as an executry practitioner subject to conditions; or
  - (c) a decision to take any step set out in subsection (2)(a) to (g) of section 20 of this Act; and

“aggrieved person” means the applicant or, as the case may be, the executry practitioner or qualified conveyancer concerned.

#### **Commencement Information**

**I53** Sch. 1 Pt. I para. 15 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

### *Compensation*

- 16 (1) The Board shall establish and maintain a fund for the purpose of making grants to compensate persons who in the opinion of the Board have suffered pecuniary loss by reason of dishonesty in connection with the provision of—
- (a) conveyancing services by or on behalf of an independent qualified conveyancer; or
  - (b) executry services by or on behalf of an executry practitioner.
- (2) The Board may make rules with regard to the operation of the fund mentioned in sub-paragraph (1) above and, without prejudice to the foregoing generality, such rules may make provision as to—
- (a) contributions to be paid to the fund by practitioners;
  - (b) the procedure for making claims against the fund; and
  - (c) the administration, management and protection of the fund.

#### **Commencement Information**

**I54** Sch. 1 Pt. I para. 16 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule.



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### Parliamentary disqualification

- 17 In Part II of Schedule 1 to the <sup>M40</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) the following entry shall be inserted at the appropriate place in alphabetical order— “ The Scottish Conveyancing and Executory Services Board ”.

#### Commencement Information

**I55** Sch. 1 Pt. I para. 17 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M40** 1975 c. 24.

## PART II

### POWERS OF INVESTIGATION

- 18 The Board may exercise the power conferred by paragraph 19 below for the following purposes—
- (a) an inquiry under subsection (1) of section 20 of this Act;
  - (b) a review of a decision by virtue of subsection (11)(a) of that section; and
  - (c) consideration by the Board whether to exercise the powers conferred on them by section 21 of this Act.

#### Commencement Information

**I56** Sch. 1 Pt. II para. 18 wholly in force; Sch. 1 Pt. II para. 18 not in force at Royal Assent, see s. 75(2); Sch. 1 Pt. II para. 18 in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

- 19 The Board may give notice in writing to a practitioner specifying the subject matter of their investigation and requiring either or both of the following—
- (a) the production or delivery to any person appointed by the Board, at a time and place specified in the notice, of such documents so specified as are in the possession or control of the practitioner and relate to the subject matter of the investigation; and
  - (b) an explanation, within such period being not less than 21 days as the notice may specify, from the practitioner regarding the subject matter of the investigation.

#### Commencement Information

**I57** Sch. 1 Pt. II para. 19 wholly in force; Sch. 1 Pt. II para. 19 not in force at Royal Assent, see s. 75(2); Sch. 1 Pt. II para. 19 in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

- 20 If a practitioner fails to comply with a notice under paragraph 19(a) above, the Board may apply to the Court of Session for an order requiring the practitioner to produce or deliver the documents to the person appointed at the place specified in the notice within such time as the court may order.

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### Commencement Information

**I58** Sch. 1 Pt. II para. 20 wholly in force; Sch. 1 Pt. II para. 20 not in force at Royal Assent, see. s. 75(2); Sch. 1 Pt. II para. 20 in force at 1.3.1997 by S.I. 1996/2984, art. 3, Sch. 1 (as amended by S.I. 1996/2966, art. 2)

VALID FROM 19/03/2007

## SCHEDULE 2

Section 25.

### PUBLICATION OF APPLICATIONS MADE UNDER SECTION 25

- 1 Any professional or other body making an application under section 25 of this Act shall, for a period of six weeks beginning with the date on which the application is submitted to the Lord President and the Secretary of State—
- (a) make a copy of the draft scheme referred to in section 25(2) of this Act available for public inspection at a specified place; and
  - (b) on a request from any person—
    - (i) send him a copy of the draft scheme; or
    - (ii) make a copy of the draft scheme available for public inspection at a suitable place in his locality.
- 2 Any person may make written representations concerning any draft scheme submitted under section 25 of this Act, and such representations shall—
- (a) be made to both the Lord President and the Secretary of State; and
  - (b) be delivered to both the Lord President and the Secretary of State before the expiry of the period of six weeks beginning with the date on which the application is made.
- 3 At the same time as an application under section 25 is submitted to the Lord President and the Secretary of State, the body making the application shall place an advertisement mentioning the matters referred to in paragraph 4 below in the Edinburgh Gazette and in a daily newspaper circulating throughout Scotland.
- 4 An advertisement such as referred to in paragraph 3 above shall state that—
- (a) a copy of the draft scheme referred to in section 25(2) of this Act will be available for public inspection at a specified place for a period of six weeks beginning with the date on which the advertisement appears;
  - (b) a copy of the draft scheme will be—
    - (i) sent, free of charge, to any person on request; or
    - (ii) made available for public inspection at a suitable place in that person's locality;
  - (c) any person may make written representations concerning the draft scheme to the Lord President and the Secretary of State; and
  - (d) any such representations are to be delivered within the period of six weeks beginning with the date on which the application is made.

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## SCHEDULE 3

Section 34.

### SCOTTISH LEGAL SERVICES OMBUDSMAN

- <sup>F29</sup>1 The Scottish legal services ombudsman <sup>F30</sup> . . . shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

#### Textual Amendments

**F29** Sch. 3 para. 1 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

**F30** Words in Sch. 3 para. 1 repealed (21.5.1997) by 1997 c. 35, ss. 6, 10, 11(2), Sch.

- <sup>F31</sup>2 The Secretary of State may give general directions to the ombudsman about the scope and discharge of his functions, and shall publish any such directions.

#### Textual Amendments

**F31** Sch. 3 para. 2 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 3 (1) The Secretary of State may with the consent of the Treasury determine the terms and conditions of service, including remuneration, of the ombudsman.
- (2) Where a person appointed to the office of ombudsman ceases to hold that office otherwise than on the expiry of the term of office specified in his appointment, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, <sup>F32</sup> . . . , make a payment to that person of such amount as the Secretary of State may, with the consent of the Treasury, determine.

#### Textual Amendments

**F32** Words in Sch. 3 para. 3(2) repealed (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 101(3), Pt. IV

#### Commencement Information

**I59** Sch. 3 para. 3 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 4 The Secretary of State may appoint staff for the ombudsman of such number, and on such terms and conditions of service, as he may <sup>F33</sup> . . . determine; and such terms and conditions may include provision as to remuneration, and as to compensation for loss of employment (which may take the form of pensions, allowances or gratuities).

#### Textual Amendments

**F33** Words in Sch. 3 para. 4 repealed (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 101(3), Pt. IV

#### Commencement Information

**I60** Sch. 3 para. 4 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- <sup>F34</sup>5 Neither the ombudsman nor his staff are, in such capacity, Crown servants.

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#### Textual Amendments

**F34** Sch. 3 para. 5 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**

6 The Secretary of State shall pay the expenses of the ombudsman and of his staff.

#### Commencement Information

**I61** Sch. 3 para. 6 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**

F357 .....

#### Textual Amendments

**F35** Sch. 3 para. 7 repealed (21.5.1997) by 1997 c. 35, ss. 6, 10, 11(2), **Sch.**

F368 .....

#### Textual Amendments

**F36** Sch. 3 para. 8 repealed (21.5.1997) by 1997 c. 35, ss. 6, 10, 11(2), **Sch.**

9 The ombudsman shall make an annual report of the discharge of the functions conferred on him under this Act to the Secretary of State.

#### Commencement Information

**I62** Sch. 3 para. 9 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**

[<sup>F37</sup>9A The ombudsman may, in addition to making a report under paragraph 9 above, report to the Secretary of State at any time on any matter relating to the discharge of the ombudsman's functions.]

#### Textual Amendments

**F37** Sch. 3 para. 9A inserted (21.5.1997) by 1997 c. 35, ss. 4, 6, 11(2)

[<sup>F38</sup>9B The ombudsman shall provide the Secretary of State with such information relating to the discharge of the ombudsman's functions as the Secretary of State may see fit to require.]

#### Textual Amendments

**F38** Sch. 3 para. 9B inserted (21.5.1997) by 1997 c. 35, ss. 4, 6, 11(2)

10 The Secretary of State shall lay any report made to him under paragraph 9 above before each House of Parliament.

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#### Commencement Information

**I63** Sch. 3 para. 10 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 11 In Part III of Schedule 1 to the <sup>M41</sup>House of Commons Disqualification Act 1975 (offices disqualifying for membership) there shall be inserted at the appropriate place in alphabetical order the entry “Scottish legal services ombudsman appointed under section 34 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990”.

#### Commencement Information

**I64** Sch. 3 para. 11 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M41** 1975 c. 24.

## SCHEDULE 4

Section 35.

### JUDICIAL APPOINTMENTS

#### *Appointments of sheriffs principal, sheriffs and solicitors as judges of the Court of Session*

- 1 The following categories of person shall, in accordance with this paragraph and paragraphs 2 and 3 below, be eligible to be appointed as judges of the Court of Session—
- (a) sheriffs principal and sheriffs who have held office as such for a continuous period of not less than 5 years; and
  - (b) solicitors who, by virtue of section 25A (rights of audience) of the <sup>M42</sup>Solicitors (Scotland) Act 1980, have for a continuous period of not less than 5 years had a right of audience in both the Court of Session and the High Court of Justiciary.

#### Commencement Information

**I65** Sch. 4 para. 1 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M42** 1980 c. 46.

- 2 Paragraph 1(a) above shall not confer any eligibility for appointment as a judge of the Court of Session on a temporary sheriff principal or sheriff appointed under section 11 (temporary sheriffs principal and sheriffs) of the <sup>M43</sup>Sheriff Courts (Scotland) Act 1971 who is not otherwise eligible for appointment as a judge of the Court of Session.

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#### Commencement Information

**I66** Sch. 4 para. 2 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M43** 1971 c. 58.

- 3 Paragraphs 1 and 2 above are without prejudice to any eligibility to be appointed as a judge of the Court of Session conferred on any category of persons by any other enactment.

#### Commencement Information

**I67** Sch. 4 para. 3 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### *Further provision as to Inner House and exchequer causes*

- 4 (1) The <sup>M44</sup>Court of Session Act 1988 shall be amended as follows.
- (2) In section 2 (composition of court)—
- (a) in subsection (3), for the words “the senior judge present shall preside and shall” there shall be substituted the words “ shall direct one of those judges to preside and to ”; and
- (b) for subsection (6) there shall be substituted the following subsection—
- “(6) Subject to subsection (7) below, where a vacancy arises in a Division of the Inner House the Lord President and the Lord Justice Clerk, with the consent of the Secretary of State and after such consultation with judges as appears to them to be appropriate in the particular circumstances, shall appoint a Lord Ordinary to fill that vacancy.”.
- (3) In section 3 (exchequer causes), for the words “Court by Act of Sederunt” there shall be substituted the words “ Lord President ”.

#### Commencement Information

**I68** Sch. 4 para. 4 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

#### Marginal Citations

**M44** 1988 c. 36.

#### *Temporary judges*

- <sup>F39</sup>~~F40~~(1) Any person who is eligible under—
- (a) paragraph 1 above; or
- (b) any other enactment,
- for appointment as a judge of the Court of Session may be appointed as a temporary judge under section 35(3) of this Act for such period as the [<sup>F41</sup>Scottish Ministers] may determine, but, subject to paragraph 9 below, no such appointment shall extend beyond the date on which the person reaches the age of [<sup>F42</sup>70 years].

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[<sup>F40</sup>(2) Sub-paragraph (1) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).]

#### Textual Amendments

- F39** Sch. 4 para. 5 renumbered as Sch. 4 para. 5(1) (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para. 6(2)** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**.
- F40** Sch. 4 para. 5(2) added (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para. 6(2)** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**.
- F41** Words in Sch. 4 para. 5(1) substituted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 101(4)(a)**
- F42** Words in Sch. 4 para. 5(1) substituted (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para. 6(1)** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**.

#### Commencement Information

- I69** Sch. 4 para. 5 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Sch** edule

- 6 Subject to paragraph 7 below, a person appointed as a temporary judge under the said section 35(3) shall, while so acting, be treated for all purposes as, and accordingly may perform any of the functions of, a judge of the Court in which he is acting.

#### Commencement Information

- I70** Sch. 4 para. 6 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**

- 7 Subject to paragraph 8 below, a person shall not, by virtue of paragraph 6 above, be treated as a judge of the Court of Session for the purposes of any other enactment or rule of law relating to—
- (a) the appointment, tenure of office, retirement, removal or disqualification of judges of that Court, including, without prejudice to the generality of the foregoing, any enactment or rule of law relating to the number of judges who may be appointed; and
  - (b) the remuneration, allowances or pensions of such judges.

#### Commencement Information

- I71** Sch. 4 para. 7 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**

- 8 A person appointed to be a temporary judge of the Court of Session shall, by virtue of such appointment, be a temporary Lord Commissioner of Justiciary in Scotland.

#### Commencement Information

- I72** Sch. 4 para. 8 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**

- 9 Notwithstanding the expiry of any period for which a person is appointed under the said section 35(3) to act as a judge—
- (a) he may attend at the Court of Session or the High Court of Justiciary for the purpose of continuing to deal with, giving judgment in, or dealing with



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- any matter relating to, any case begun before him while acting as a judge of either Court; and
- (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, he shall be treated as being or, as the case may be, having been, a judge of the relevant Court.

**Commencement Information**  
**I73** Sch. 4 para. 9 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 10 The [<sup>F43</sup>Scottish Ministers] may pay to a person appointed under the said section 35(3) such remuneration [<sup>F43</sup>as they may determine].

**Textual Amendments**  
**F43** Words in Sch. 4 para. 10 substituted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 101(4)(b)

**Commencement Information**  
**I74** Sch. 4 para. 10 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

- 11 The appointment of a person to act as a temporary judge under the said section 35(3) is without prejudice to—
- (a) any appointment held by him as a sheriff principal or sheriff; or
  - (b) his continuing with any business or professional occupation not inconsistent with his acting as a judge.

**Commencement Information**  
**I75** Sch. 4 para. 11 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, Schedule

*Amendments to the Small Landholders (Scotland) Act 1911 (c.49)*

<sup>F44</sup>12 .....

**Textual Amendments**  
**F44** Sch. 4 para. 12 repealed (5.1.1994) by 1993 c. 45, s. 2(2)(3), Sch.2.

SCHEDULE 5

Section 49.

APPLICATIONS FOR CHILDREN’S CERTIFICATES

- 1 Applications may be made to a licensing board in accordance with the provisions of this Schedule for a children’s certificate within the meaning of section 49 of this Act.
- 2 The holder of a public house licence or hotel licence in respect of any premises or the applicant for a new public house or hotel licence or for the renewal of such



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- a licence may make an application for a children’s certificate in respect of those premises, and any such application shall be in such form as may be prescribed, shall be completed and signed by the applicant or his agent and shall be lodged with the clerk of the licensing board within whose area the premises are situated not later than five weeks before the first day of the meeting of the board at which the application is to be considered.
- 3 (1) On any application for the grant of a children’s certificate in respect of only part of any premises, the licensing board may require a plan of the premises to which the application relates to be produced to it and lodged with the clerk.
- (2) A plan produced and lodged in accordance with this paragraph shall be such as will enable the board to ascertain to which part of the premises it is proposed the certificate should relate.
- 4 A copy of every application made under this Schedule shall be sent by the applicant to the chief constable, and if the chief constable desires to object to the grant of a children’s certificate he shall, not later than seven days before the meeting of the licensing board at which the application is to be considered—
- (a) lodge with the clerk of the board a written notice of his objection specifying the grounds of his objection to the grant of the certificate; and
  - (b) intimate such objection and grounds to the applicant,
- and the chief constable shall be entitled to appear at the meeting of the licensing board which considers the application and make objection to the grant of the certificate.
- 5 A licensing board shall not, within two years of its refusal of an application made under paragraph 2 above in respect of any premises, entertain another such application in respect of those premises unless it has made a direction to the contrary in respect of that refusal.
- 6 An application for a new public house licence or hotel licence or for the renewal of such a licence under section 10 of the principal Act shall state whether the applicant is making an application for a children’s certificate.
- 7 The grant of an application for a children’s certificate shall come into effect on the making of the grant or, in the case of such an application made with an application for a new public house or hotel licence, on the day on which such licence comes into effect.
- 8 The grant of an application for a children’s certificate made at the time of an application for the renewal of a licence shall come into effect on the renewal of the licence to which the application relates.
- 9 If an application for a children’s certificate is made at the same time as an application for the renewal of a licence, any existing grant of such an application for a children’s certificate shall continue to have effect until the first mentioned application is granted or, as the case may be, refused by the board.
- 10 The grant of an application for a children’s certificate shall cease to have effect when the licence to which it relates ceases to have effect.

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## F45 SCHEDULE 6

### Textual Amendments

F45 Sch. 6 repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), Sch. 5 (with Sch. 3 para. 1)

## SCHEDULE 7

Section 66.

### UNCITRAL

#### MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

### CHAPTER 1

#### GENERAL PROVISIONS

#### ARTICLE 1

##### SCOPE OF APPLICATION

- (1) This Law applies to international commercial arbitration, subject to any agreement in force between the United Kingdom and any other State or States which applies in Scotland.
- (2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in Scotland.
- (3) An arbitration is international if:
  - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (b) one of the following places is situated outside the State in which the parties have their places of business:
    - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
    - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected.
- (4) For the purposes of paragraph (3) of this article:
  - (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
  - (b) if a party does not have a place of business, reference is to be made to his habitual residence.

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- (5) This Law shall not affect any other enactment or rule of law in force in Scotland by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

## ARTICLE 2

### DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Law:

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means an arbitrator or a panel of arbitrators;
- (c) “arbitrator” includes an arbiter;
- (d) “commercial”, in relation to an arbitration, includes matters arising from all relationships of a commercial nature, whether contractual or not;
- (e) “country” includes Scotland;
- (f) “court” means a body or organ of the judicial system of a State;
- (g) “relationships of a commercial nature” include, but are not limited to, the following transactions, namely any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road;
- (h) “State”, except in article 1(1), includes Scotland;
- (i) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorise a third party, including an institution, to make that determination;
- (j) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (k) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim;
- (l) article headings are for reference purposes only and are not to be used for purposes of interpretation.

## ARTICLE 3

### RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempts to deliver it;

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(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

#### ARTICLE 4

##### WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objections to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

#### ARTICLE 5

##### EXTENT OF COURT INTERVENTION

In matters governed by this Law, no court shall intervene except where so provided in this Law.

#### ARTICLE 6

##### COURT FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE, SUPERVISION AND ENFORCEMENT

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3), 34(2), 35 and 36 shall be performed by:

- (a) the Court of Session; or
- (b) where it has jurisdiction, the sheriff court.

### CHAPTER II

#### ARBITRATION AGREEMENT

#### ARTICLE 7

##### DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the

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existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

## ARTICLE 8

### ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests at any time before the pleadings in the action are finalised, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

## ARTICLE 9

### ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

- (1) It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.
- (2) In paragraph (1) of this article “interim measure of protection” includes, but is not limited to, the following:
  - (a) arrestment or inhibition to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by another party;
  - (b) interim interdict or other interim order.
- (3) Where:
  - (a) a party applies to a court for an interim interdict or other interim order; and
  - (b) an arbitral tribunal has already ruled on the matter,the court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.

## CHAPTER III

### COMPOSITION OF ARBITRATION TRIBUNAL

## ARTICLE 10

### NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.

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- (2) Failing such determination, there shall be a single arbitrator.

## ARTICLE 11

### APPOINTMENT OF ARBITRATORS

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court specified in article 6;
  - (b) in an arbitration with a single arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties:
- (a) a party fails to act as required under such procedure, or
  - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
  - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,
- any party may request the court specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court specified in article 6 shall be subject to no appeal. The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

## ARTICLE 12

### GROUND FOR CHALLENGE

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

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- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

### ARTICLE 13

#### CHALLENGE PROCEDURE

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.
- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may, within thirty days after having received notice of the decision rejecting the challenge, request the court specified in article 6 to decide on the challenge, which decision shall be subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

### ARTICLE 14

#### FAILURE OR IMPOSSIBILITY TO ACT

- (1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

### ARTICLE 15

#### APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be

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appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

## CHAPTER IV

### JURISDICTION OF ARBITRAL TRIBUNAL

#### ARTICLE 16

##### COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules on such a plea as a preliminary question, any party may, within thirty days after having received notice of that ruling, request the court specified in article 6 to decide the matter, which decision shall be subject to no appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

#### ARTICLE 17

##### POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.
- (2) An order under paragraph (1) of this article shall take the form of an award and articles 31, 35 and 36 shall apply accordingly.



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## CHAPTER V

### CONDUCT OF ARBITRAL PROCEEDINGS

#### ARTICLE 18

##### EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

#### ARTICLE 19

##### DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

#### ARTICLE 20

##### PLACE OF ARBITRATION

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

#### ARTICLE 21

##### COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

#### ARTICLE 22

##### LANGUAGE

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- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### ARTICLE 23

#### STATEMENTS OF CLAIM AND DEFENCE

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

### ARTICLE 24

#### HEARINGS AND WRITTEN PROCEEDINGS

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

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## ARTICLE 25

### DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

## ARTICLE 26

### EXPERT APPOINTED BY ARBITRAL TRIBUNAL

- (1) Unless otherwise agreed by the parties, the arbitral tribunal:
  - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
  - (b) may require a party to give the expert any relevant information or to provide access to any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

## ARTICLE 27

### COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the Court of Session or the sheriff court assistance in taking evidence and recovering documents. The court may execute the request within its competence and according to its rules on taking evidence and recovery of documents.

## CHAPTER VI

### MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

## ARTICLE 28

### RULES APPLICABLE TO SUBSTANCE OF DISPUTE

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless

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otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

## ARTICLE 29

### DECISION MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

## ARTICLE 30

### SETTLEMENT

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if so requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

## ARTICLE 31

### FORM AND CONTENTS OF AWARD

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is on agreed terms under article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

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## ARTICLE 32

### TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
  - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
  - (b) the parties agree on the termination of the proceedings;
  - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

## ARTICLE 33

### CORRECTION AND INTERPRETATION OF AWARD AND MAKING OF ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
  - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
  - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may, within thirty days of receipt of the award, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction or interpretation under paragraph (1) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

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## CHAPTER VII

### RECOURSE AGAINST AWARD

#### ARTICLE 34

##### APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
  - (a) the party making the application furnishes proof that:
    - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of Scotland; or
    - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
    - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
    - (v) the award was procured by fraud, bribery or corruption; or
  - (b) the court finds that:
    - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Scotland; or
    - (ii) the award is in conflict with public policy.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal. This paragraph does not apply to an application for setting aside on the ground mentioned in paragraph (2)(a)(v) of this article.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

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## CHAPTER VIII

### RECOGNITION AND ENFORCEMENT OF AWARDS

#### ARTICLE 35

##### RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.
- (2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in English, the party shall supply a duly certified translation thereof into English.

#### ARTICLE 36

##### GROUND FOR REFUSING RECOGNITION OR ENFORCEMENT

- (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
  - (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
    - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
    - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
    - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
    - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
    - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made, or
  - (b) if the court finds that:

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- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Scotland; or
  - (ii) the recognition or enforcement of the award would be contrary to public policy.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

## SCHEDULE 8

Section 74.

## AMENDMENT OF ENACTMENTS

## PART I

## AMENDMENTS TO THE LICENSING (SCOTLAND) ACT 1976

- 1 The <sup>M47</sup>Licensing (Scotland) Act 1976 shall be amended as follows.

**Marginal Citations**

M47 1976 c. 66.

- 2 In subsection (2) of section 5 (restriction on power of licensing board to delegate functions) at the end there shall be added the following paragraph—
- “(1) making a decision on an application for the grant of a children’s certificate under section 49 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”
- 3 In subsection (6) of that section after the words “(a) to (i)” there shall be added the words “ and (l) ”
- 4 In subsection (3) of section 6 (voting by chairman) the words from “Provided that” to the end of the subsection shall cease to have effect.
- 5 In section 16 (persons who may object to licence applications)—
- (a) in subsection (1), at the end there shall be added—
    - “(e) the fire authority for the area in which the premises are situated;
    - (f) a local authority for the area in which the premises are situated.”;
  - (b) in subsection (3), after “made,” there shall be inserted the words “ or, in the case of the agent of an applicant, shall be his place of business, ”; and
  - (c) in subsection (5), for the word “hear” there shall be substituted the words “ , whether or not the objector appears, consider ”.
- 6 In section 17 (grounds for refusal of an application), for paragraph (d) of subsection (1) there shall be substituted the following paragraph—
- “(d) that, having regard to—



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- (i) the number of licensed premises in the locality at the time the application is considered; and
- (ii) the number of premises in respect of which the provisional grant of a new licence is in force,

the board is satisfied that the grant of the application would result in the over provision of licensed premises in the locality, ”.

- 7 In section 18 (giving of reasons for decisions of a licensing board)—
- (a) in subsection (1), after “shall” there shall be inserted the words “, within 21 days of being required to do so under subsection (2) below, ” and the words “when required to do so under subsection (2) below” shall cease to have effect; and
  - (b) in subsection (4), at the beginning there shall be inserted the words “ The period of 21 days referred to in subsection (1) above and ”.
- 8 In section 21 (issue of licences)—
- (a) in subsection (1), at the end there shall be added the words “ and shall do so within 28 days of the grant of the licence ”;
  - (b) in subsection (2), for the words “when lawfully required” there shall be substituted the words “ on application ”; and
  - (c) after subsection (2) there shall be added the following subsection—
    - “(3) The period of 28 days referred to in subsection (1) above shall not include a day which is a Sunday, Christmas Day, New Year’s Day, Good Friday, a bank holiday, or a public holiday, or a day appointed for public thanksgiving or mourning.”
- 9 In section 33 (occasional licence for premises other than licensed premises)—
- (a) in subsections (1) and (2) for the words “on such day” in each place where they occur there shall be substituted the words “ for such period of not more than 14 days ”;
  - (b) in subsection (9) there shall be added at the end the words “ but the board shall not cause to be published the address of the applicant if the applicant provides the name and address of an agent through whom he may have intimated to him any objections. ”
- 10 In subsection (1) of section 34 of that Act (occasional permission to sell alcoholic liquor) for the words “on such day” there shall be substituted the words “ for such period of not more than 14 days ”.
- 11 (1) Section 39 (appeals against the decisions of licensing boards) shall be amended as follows.
- (2) After subsection (2) there shall be inserted the following subsection—
    - “(2A) A licensing board may be a party to any appeal under this section.”
  - (3) In subsection (5) for the words “grounded on paragraph (b) of subsection (4) above” there shall be substituted the words “ under this section ”.
- 12 In section 64—
- (a) in subsection (1), after the words “an entertainment licence” there shall be inserted the words “, a refreshment licence ”; and
  - (b) after subsection (8) there shall be inserted the following subsection—

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“(9) Where a licensing board has refused an application under subsection (1) above for the grant of an occasional or regular extension of permitted hours in respect of any premises, the board shall not, within one year of its refusal, entertain a subsequent application for such an extension in respect of the same premises unless the board, at the time of refusing the first-mentioned application, makes a direction to the contrary.”

13 In each of subsections (1) and (2) of section 69 (prohibition on children being in certain licensed premises) at the beginning there shall be inserted the words “ Subject to section 49 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 ”.

14 In section 70 (children in premises in respect of which a refreshment licence is held) for the number “21” there shall be substituted the number “ 18 ”.

15 In section 97 (restrictions on supply of alcoholic liquor on off-sale premises)—  
 (a) in subsection (1) for the words “supplies to any person, gratuitously or otherwise,” there shall be substituted the words “ sells to any person ”; and  
 (b) in subsection (2) the words “or supply” shall be omitted.

16 In paragraph (j) of section 108 (grounds of objection to renewal of registration by club) after the word “is” there shall be inserted the words “ or, in the case of an application for the renewal of a certificate of registration, has been, at any time during the currency of the certificate of registration in respect of which the application for renewal is made, ”.

17 In subsection (1) of section 109 (cancellation of certificate of registration of club) after the word “being” there shall be inserted the words “ or has been, at any time during the currency of the certificate of registration, ”.

18 In section 139 (interpretation) after subsection (4) there shall be inserted the following subsections—

“(5) Any requirement under this Act to cause to be published the address of—  
 (a) an applicant in respect of any competent application made to a licensing board;  
 (b) an employee or agent of an applicant who is not an individual natural person; or  
 (c) a person who is to be the holder of a licence under Part III of this Act, may be satisfied by causing to be published the address of his agent and the clerk of a licensing board shall cause to be published the address of the agent rather than the address of any person mentioned in paragraphs (a) to (c) above if so requested by that person.

(6) Any requirement in this Act to intimate anything to an applicant may be satisfied by so intimating to his agent.”

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## PART II

### MISCELLANEOUS

#### *The Probate and Legacy Duties Act 1808 (c. 149)*

- 19 In section 38 of the Probate and Legacy Duties Act 1808 (executors to exhibit inventories of estate)—
- (a) for the words “oath or solemn affirmation” in both places where they occur there shall be substituted “ declaration ”; and
  - (b) the words from “(which oath” to “administer)” shall cease to have effect.

#### *The Confirmation of Executors (Scotland) Act 1823 (c. 98)*

- 20 (1) In section 3 of the Confirmation of Executors (Scotland) Act 1823 (which requires applications for confirmation to relate to the whole known moveable estate), for the word “oath” in both places where it occurs there shall be substituted “ declaration ”.
- (2) In section 4 of that Act (confirmation by executor’s creditor), for the word “oath” there shall be substituted “ declaration ”.

#### *The Judicial Factors Act 1849 (c. 51)*

- 21 (1) In section 5 (factor to lodge monies in one of the banks of Scotland) of the Judicial Factors Act 1849—
- (a) in subsection (1), for the words “banks in Scotland established by Act of Parliament or royal charter” there shall be substituted the words—  
“following institutions, that is to say—
    - (a) an institution authorised under the Banking Act 1987;
    - (b) the National Savings Bank; or
    - (c) a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986,”; and
  - (b) at the end of that section there shall be inserted the following subsection—  
“(4) In lodging money under subsection (1) above the judicial factor shall not require to have regard to any provision of the Trustee Investments Act 1961 which would, apart from the provisions of this subsection, require him to seek advice before depositing money in any of the institutions mentioned in that subsection.”.
- (2) In section 33 (power of accountant to require information) of that Act, for the word “bank”—
- (a) in the first place where it occurs, there shall be substituted the words “ institution such as is mentioned in paragraphs (a) to (c) of section 5(1) of this Act ”; and
  - (b) in the second and third places where it occurs, there shall be inserted the word “ institution ”.
- (3) In section 34 (discharge of factors, tutors and curators) of that Act, at the beginning there shall be inserted the words “ Subject to section 34A of this Act, ”.

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- (4) In section 37 (accumulation of principal and interest on accounts and deposits) of that Act—
- (a) for the words “bank in Scotland” there shall be substituted the words “institution such as is mentioned in paragraphs (a) to (c) of section 5(1) of this Act”; and
  - (b) for the words “any bank” there shall be substituted the words “any such institution”.

*The Confirmation of Executors (Scotland) Act 1858 (c. 56)*

- 22 (1) In section 2 of the Confirmation of Executors (Scotland) Act 1858 (petition for confirmation to be subscribed by petitioner or his agent), at the end there shall be added “or by an executry practitioner or a recognised financial institution providing executry services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990”.
- (2) In Schedules D and E to that Act (forms of confirmation), for the word “oath” there shall be substituted “declaration”.

**Commencement Information**

**185** Sch. 8 para. 22 partly in force; Sch. 8 not in force at Royal Assent see s. 75(2); para. 22(1) in force for certain purposes and para. 22(2) wholly in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

*The Promissory Oaths Act 1868 (c. 72)*

- 23 In the second part of the Schedule to the Promissory Oaths Act 1868 (officers required to take oath of allegiance and judicial oath), after the words “Judges of the Court of Session in Scotland” there shall be inserted the words “, temporary judges of the Court of Session and High Court of Justiciary appointed under section 35(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,”.

*The Intestates Widows and Children (Scotland) Act 1875 (c. 41)*

- 24 (1) In section 3 of the Intestates Widows and Children (Scotland) Act 1875 (commissary clerk to prepare inventory etc for widow or children where deceased’s estate small)—
- (a) for the word “oath” in the first place where it occurs there shall be substituted “declaration”; and
  - (b) for the words “shall take the oath of the applicant thereto” there shall be substituted “on the inventory and declaration being signed by the applicant”.
- (2) In Schedule A to that Act (form of inventory etc)—
- (a) for the word “oath” in both places where it occurs there shall be substituted “declaration”;
  - (b) for the words from “in presence of” to “depones” there shall be substituted “[name and address of applicant] (hereinafter referred to “the applicant”) hereby declares”;
  - (c) for the words “deponent” wherever it occurs and “deponent’s” there shall be substituted respectively “applicant” and “applicant’s”; and

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(d) the words from “All which” to the end shall cease to have effect.

(3) In Schedule B to that Act (form of confirmation)—

- (a) for the word “oath” in both places where it occurs there shall be substituted “ declaration ”; and
- (b) for the word “deponed” there shall be substituted “ declared ”.

*The Small Testate Estates (Scotland) Act 1876 (c. 24)*

25 (1) In section 3 of the Small Testate Estates (Scotland) Act 1876 (simplified procedure for confirmation to small estates)—

- (a) for the word “oath” there shall be substituted “ declaration ”; and
- (b) for the words “being duly sworn to” there shall be substituted “ and declaration being duly signed ”.

(2) In Schedule A to that Act (form of inventory etc)—

- (a) for the word “oath” in both places where it occurs there shall be substituted “ declaration ”;
- (b) for the words from “In presence of” to “depones” there shall be substituted “ [name and address of applicant] (hereinafter referred to “the applicant”) hereby declares ”;
- (c) for the word “deponent” wherever it occurs there shall be substituted “ applicant ”; and
- (d) the words from “All which” to the end shall cease to have effect.

(3) In Schedule B to that Act (form of confirmation), for the word “oath” there shall be substituted “ declaration ”.

*The Sheriff Courts (Scotland) Act 1971 (c.58)*

26 (1) For subsection (1) of section 33 (Sheriff Court Rules Council) of the Sheriff Courts (Scotland) Act 1971 there shall be substituted the following subsection—

“(1) There shall be established a body (to be known as the Sheriff Court Rules Council, and hereafter in this section and section 34 called “the Council”) which shall have the functions conferred on it by section 34, and which shall consist of—

- (a) two sheriffs principal, three sheriffs, one advocate, five solicitors and two whole-time sheriff clerks, all appointed by the Lord President of the Court of Session, after consultation with such persons as appear to him to be appropriate;
- (b) two persons appointed by the Lord President after consultation with the Secretary of State, being persons appearing to the Lord President to have—
  - (i) a knowledge of the working procedures and practices of the civil courts;
  - (ii) a knowledge of consumer affairs; and
  - (iii) an awareness of the interests of litigants in the civil courts;and
- (c) one person appointed by the Secretary of State, being a person appearing to the Secretary of State to be qualified for such appointment.”

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- (2) In subsection (3) of that section, for the words “consultation with such persons as may appear to him appropriate” there shall be substituted the words “such consultation as is mentioned in paragraph (a) or, as the case may be, (b) of subsection (1) above”.

*The Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 27 (1) The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.  
 (2) After section 282 there shall be inserted the following sections—

**“282A Right of audience of solicitor before the High Court.**

Without prejudice to section 250 of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980 a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.

**282B Further provision as to rights of audience.**

Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.”.

- (3) In subsection (1)(b) of section 407 (imprisonment for non-payment of fine), at the end there shall be inserted “either with immediate effect or to take effect in the event of the person failing to pay the fine or any part or instalment of it by such further time as the court may order”.

**Commencement Information**

**186** Sch 8 para. 27 wholly in force; Sch. 8 para. 27(3) in force at Royal Assent see s. 75(4) and Sch. 8 para. 27(1)(2) wholly in force at 3.6.1991 see s. 75(2) and S.I. 1991/1252, art. 3, **Schedule 1**.

*The Community Service by Offenders (Scotland) Act 1978 (c. 49)*

- 28 In section 4 of the Community Service by Offenders (Scotland) Act 1978 (which, amongst other things, gives the court powers to deal with failure to comply with community service orders) there shall be added at the end the following subsection—

“(3) The evidence of one witness shall, for the purposes of subsection (2) above, be sufficient evidence.”.

*The Solicitors (Scotland) Act 1980 (c. 46)*

- 29 (1) The Solicitors (Scotland) Act 1980 shall be amended as follows.  
 (2) In section 9 (removal of name from roll on request)—  
 (a) after the words “his name” there shall be inserted the words “, or any annotation made against his name under section 25A(3), ”; and

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- (b) after the words “that solicitor” there shall be inserted the words “ or, as the case may be, the annotation against his name, ”.
- (3) In section 10 (restoration of name to roll on request), in subsection (1A)—
- (a) after the words “whose name” there shall be inserted the words “ , or any annotation against whose name, ”; and
  - (b) after the words “that solicitor” there shall be inserted the words “ or, as the case may be, the annotation, ”.
- (4) In section 20 (duty of Council to supply lists)—
- (a) in subsection (1), after paragraph (a) there shall be inserted the following paragraph—
    - “(ab) to the Principal Clerk of Session;”;
  - (b) for subsection (2) there shall be substituted the following subsection—
    - “(2) The Council shall send a list of all solicitors who have rights of audience in—
      - (a) the Court of Session, to—
        - (i) the Principal Clerk of Session;
        - (ii) the Principal Clerk of the Judicial Office of the House of Lords; and
        - (iii) the Registrar to the Judicial Committee of the Privy Council;
      - and
      - (b) the High Court of Justiciary, to the Principal Clerk of Justiciary,as soon as practicable after 1st December in each year; and where, by virtue of an order under section 53(2)(ba), 53A(2)(ba) or 55(1)(ba), a solicitor’s right of audience in any of those courts is suspended or revoked, the Council shall forthwith inform the persons mentioned in this subsection of that fact.”.
- (5) In section 26 of the 1980 Act (offence for solicitors to act as agents for unqualified persons)—
- (a) in subsection (1)(c), at the beginning there shall be inserted “ subject to subsection (4), ”;
  - (b) in subsection (1)(d), at the beginning there shall be inserted “ subject to subsection (4), ”;
  - (c) in subsection (2), at the end there shall be inserted “ or employed by a law centre. ”; and
  - (d) after subsection (3) there shall be inserted—
    - “(4) Subsection (1)(c) and (d) shall not apply in relation to—
      - (a) writs relating to heritable or moveable property drawn or prepared upon the account of or for the profit of independent qualified conveyancers providing conveyancing services within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; or
      - (b) papers to found or oppose an application for a grant of confirmation in favour of executors drawn or prepared upon

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the account of or for the profit of an executry practitioner or recognised financial institution providing executry services within the meaning of the said section 23.”

(6) In section 32 (which makes it an offence for unqualified persons to prepare writs and papers relating to certain matters)—

- (a) in subsection (2)(a), after the words “fee, gain or reward” there shall be inserted the words “(other than by way of remuneration paid under a contract of employment)”; and
- (b) after subsection (2) there shall be inserted the following subsections—

“(2A) Subsection (1)(a)

shall not apply to a qualified conveyancer providing conveyancing services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(2B) Subsection (1)(b)

shall not apply to a person who is, by virtue of an act of sederunt made under section 32 (power of Court of Session to regulate procedure) of the Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.

(2C) Subsection (1)(c)

shall not apply to an executry practitioner or a recognised financial institution providing executry services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”.

(7) At the end of section 33 (unqualified person not entitled to fees etc.) there shall be inserted the words “or in relation to writs framed or drawn by a person who is, by virtue of an act of sederunt made under section 32 of the<sup>M48</sup>Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.”

(8) In section 42A (powers of Council where inadequate professional services alleged), at the end of subsection (2) there shall be inserted the following paragraph—

“(d) to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Council may specify.”

(9) In section 51(3) (complaints to Scottish Solicitors Discipline Tribunal)—

- (a) after paragraph (b) there shall be inserted—  
 “(ba) the Dean of the Faculty of Advocates;”; and
- (b) for paragraph (f) there shall be substituted—  
 “(f) the Scottish legal services ombudsman.”.

(10) In section 53 (powers of Tribunal)—

- (a) after subsection (2)(b) there shall be inserted the following paragraph—  
 “(ba) order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;”;
  - (b) in subsection (2)(c), for the words “£4,000” there shall be substituted the words “£10,000”;
  - (c) after subsection (3A) there shall be inserted the following subsection—



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- “(3B) The power conferred by subsection (2)(ba) may be exercised by the Tribunal either independently of, or in conjunction with, any other power conferred by that subsection.”; and
- (d) in subsection (6), after the words “as a solicitor” there shall be inserted the words “ or that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked ”.
- (11) In section 53A (inadequate professional services: powers of Tribunal),
- (a) after subsection (2)(b) there shall be inserted the following paragraph—
- “(ba) to order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;”;
- (b) after subsection (2)(c) there shall be inserted the following paragraph—
- “(d) to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Tribunal may specify.”
- (12) In section 55 (powers of court)—
- (a) after subsection (1)(b) there shall be inserted the following paragraphs—
- “(ba) suspend the solicitor from exercising any right of audience held by him by virtue of section 25A for such period as the court may determine; or
- (bb) revoke any right of audience so acquired by him; or”;
- (b) after subsection (3) there shall be inserted the following subsection—
- “(3A) A solicitor whose rights of audience under section 25A have been revoked in pursuance of an order made by the court under subsection (1) may apply to the court for an order restoring those rights, and the court may make such order.”.
- (13) After section 56 there shall be inserted the following section—

**“56A Further provision as to compensation awards.**

- (1) The taking of any steps under section 42A(2) or 53A(2) shall not be founded upon in any proceedings for the purpose of showing that the solicitor in respect of whom the steps were taken was negligent.
- (2) A direction under section 42A(2)(d) or 53A(2)(d) to a solicitor to pay compensation to a client shall not prejudice any right of that client to take proceedings against that solicitor for damages in respect of any loss which he alleges he has suffered as a result of that solicitor’s negligence, and any sum directed to be paid to that client under either of those provisions may be taken into account in the computation of any award of damages made to him in any such proceedings.
- (3) The Secretary of State may by order made by statutory instrument amend subsection (2)(d) of sections 42A and 53A by substituting for the sum for the time being specified in those provisions such other sum as he considers appropriate.

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- (4) Before making any such order the Secretary of State shall consult the Council.
- (5) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (14) In section 63 (penalties and time limit for prosecution of offences)—
- (a) in subsection (1)—
- (i) for the words “level 3” there shall be substituted the words “ level 4 ”; and
- (ii) the words from “and to imprisonment” to the end shall cease to have effect; and
- (b) after subsection (2) there shall be inserted the following subsections—
- “(3) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity, he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Act is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the consent or connivance of a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”.
- (15) In subsection (1) of section 65 (interpretation)—
- (a) after the definition of “the court” there shall be inserted—
- ““the Director” means the Director General of Fair Trading;
- “foreign lawyer” means a person who is not a solicitor or an advocate but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outwith Scotland;”;
- (b) after the definition of “judge” there shall be inserted—
- ““law centre” means a body—
- (a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and
- (b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;”;
- (c) after the definition of “Lord President” there shall be inserted—
- ““multi-disciplinary practice” means a body corporate or a partnership—

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- (a) having as one of its directors or, as the case may be, partners, a solicitor or an incorporated practice; and
- (b) which offers services, including professional services such as are provided by individual solicitors, to the public; and
- (c) where that solicitor or incorporated practice carries out, or supervises the carrying out of, any such professional services as may lawfully be carried out only by a solicitor;

“multi-national practice” means—

- (a) a partnership whose members are solicitors or incorporated practices and registered foreign lawyers; or
  - (b) a body corporate whose members include registered foreign lawyers, and membership of which is restricted to solicitors, incorporated practices, registered foreign lawyers and other multi-national practices;”;
- (d) after the definition of “property” there shall be inserted—
- ““registered foreign lawyer” means a foreign lawyer who is registered under section 60A;”
- (e) after the definition of “the Society” there shall be inserted—
- ““Scottish legal services ombudsman” means the ombudsman appointed under section 34 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;” and
- (f) in the definition of “unqualified person”, after the word “person” there shall be inserted “, other than a multi-disciplinary practice, ”.

- (16) In Schedule 1 (The Law Society of Scotland), after paragraph 11 there shall be inserted—

*“Exemption from liability for damages*

- 11A Neither the Society nor any of its officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of its functions unless the act or omission is shown to have been in bad faith.”

- (17) In Schedule 4 (constitution, procedure and powers of Tribunal)—

- (a) in paragraph 1—
  - (i) in sub-paragraph (a), at the end there shall be inserted the words “ appointed by the Lord President; ”
  - (ii) in sub-paragraph (b), for the word “4” there shall be substituted the word “ 8 ”;
  - (iii) at the end of sub-paragraph (b) there shall be inserted the words “ appointed by the Lord President after consultation with the Secretary of State. ”; and
  - (iv) the words “appointed by the Lord President”, where they appear at the end of that paragraph, shall cease to have effect;
- (b) in paragraph 2—
  - (i) after the words “Lord President” there shall be inserted the words “ after consultation with the Secretary of State ”; and

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- (ii) for the words “so re-appointed” there shall be substituted the words “re-appointed by the Lord President”;
- (c) in paragraph 3, after the words “as the case may be,” there shall be inserted the words “after consultation with the Secretary of State,”;
- (d) in paragraph 14, for the words from “may be published” to the end there shall be substituted the words “shall, subject to paragraph 14A, be published in full”;
- (e) after paragraph 14 there shall be inserted the following paragraph—
 

“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.”;
- (f) in paragraph 17—
  - (i) the words from “also” to “before the order” shall cease to have effect;
  - (ii) after the words “and shall” there shall be inserted the words “, without prejudice to paragraph 14,”; and
  - (iii) the words from “and in such other manner” to the end shall cease to have effect; and
- (g) after paragraph 18 there shall be inserted the following paragraph—
 

“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.”.

#### Commencement Information

**I87** Sch. 8 para. 29 partly in force; para. 29 not in force at Royal Assent see s. 75(2); para. 29(6)(b) in force for certain purposes and para. 29(6)(a)(7) wholly in force at 1.1.1991 by 1990/2624; para. 29(1)-(4)(8)-(14)(15)(a)(e)(16)(17) in force at 3.6.1991 by 1991/1252, art. 3, Sch. 1; para. 29(5)(c)(15)(b)-(d)(f) in force at 17.3.1993 by S.I. 1993/641, art. 3, Sch.; para. 29(5)(6)(b) in force for certain purposes at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

#### Marginal Citations

**M48** 1971 c. 58.

#### *The Criminal Justice (Scotland) Act 1980 (c. 62)*

- 30 (1) For section 76 of the Criminal Justice (Scotland) Act 1980 (presumption as to the contents of containers) there shall be substituted the following section—

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**“76 Presumption as to contents of container.**

Section 127 of the Licensing (Scotland) Act 1976 shall apply for the purposes of any trial in connection with an alleged contravention of any provision of this Part of this Act as it applies for the purposes of any trial in connection with an alleged contravention of any provision of that Act.”

- (2) Nothing in this paragraph shall apply to the prosecution of any person for an offence committed before the commencement of this paragraph.

*The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)*

- 31 (1) In section 6(3)(e) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (occupancy rights after dealing with third parties)—

- (a) the words “, at or before the time of the dealing,” shall cease to have effect; and
- (b) in sub-paragraph (i)—
  - (i) after the word “not” there shall be inserted “ or were not at the time of the dealing ”; and
  - (ii) after the word “has” there shall be inserted “ or had ”.

- (2) In section 8 of that Act (interests of heritable creditors)—

- (a) in subsection (2), the words “before the granting of the loan” shall cease to have effect; and
- (b) in subsection (2A)—
  - (i) the words “at or before the granting of the security” shall cease to have effect;
  - (ii) after the word “not” in paragraph (a) there shall be inserted “ or were not at the time of the granting of the security ”; and
  - (iii) after the word “has” in paragraph (a) there shall be inserted “ or had ”.

*The Representation of the People Act 1983 (c. 2)*

- 32 Section 42(3)(b) of the Representation of the People Act 1983 (nomination paper in local election to contain statement of acceptance of office) shall cease to have effect.

*The Companies Act 1985 (c. 6)*

<sup>F52</sup>33 .....

**Textual Amendments**

**F52** Sch. 8 para. 33 repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), Sch. 5 (with ss. 9(3)(5)(7), 13, 14(3))

*The Family Law (Scotland) Act 1985 (c.37)*

- 34 In section 8(1) of the Family Law (Scotland) Act 1985 (orders for financial provision on divorce etc)—

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- (a) in paragraph (a), the words “or the transfer of property” shall cease to have effect; and
- (b) at the end of paragraph (a) there shall be inserted the following paragraph—
  - “(aa) an order for the transfer of property to him by the other party to the marriage;”.

*The Insolvency Act 1986 (c. 45)*

- 35 Section 53(3) of the Insolvency Act 1986 (execution of instrument appointing receiver) shall cease to have effect.

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

- 36 (1) In subsection (3) of section 4 (Scottish Legal Aid Fund) of the Legal Aid (Scotland) Act 1986—
- (a) paragraph (a) shall cease to have effect; and
  - (b) in paragraph (c), after the word “property” there shall be inserted “(including money)”.
- (2) In subsection (1) of section 6 (definitions) of that Act, for the words “if and so far as may be necessary”, in both places where they occur, there shall be substituted the words “where appropriate”.
- (3) In subsection (2) of section 13 (meaning of “civil legal aid”) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “, where appropriate,”.
- (4) In subsection (3) of section 14 (availability of civil legal aid) of that Act, at the beginning there shall be inserted the words “ Subject to subsections (4) to (6) below, ”.
- (5) After the said subsection (3) there shall be inserted the following subsections—
- “(4) Where—
    - (a) the Board has refused an application for civil legal aid by a person who has applied for such aid for the purpose of raising an action against the Board; and
    - (b) the applicant has applied to the Board for a review of his application, the Board shall, unless they decide to grant the application forthwith, refer the application, together with all relevant precognitions, statements and other papers, including any observations they wish to make on the application, to the sheriff for Lothian and Borders at Edinburgh.
  - (5) Subject to section 15 of this Act, and to subsection (2) above, where the sheriff decides—
    - (a) that the applicant has *aprobabilis causa litigandi*; and
    - (b) that it is reasonable in the particular circumstances of the case that he should receive legal aid,
 he shall so inform the Board, and the Board shall make civil legal aid available to the applicant.
  - (6) A decision made by the sheriff under subsection (5) above shall be final.”

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- (6) After subsection (2) of section 17 (contributions and payments out of property received) of that Act, there shall be inserted the following subsections—
- “(2A) Except in so far as regulations made under this section otherwise provide, any sum of money recovered under an award of or an agreement as to expenses in favour of any party in any proceedings in respect of which he is or has been in receipt of civil legal aid shall be paid to the Board.
- (2B) Except in so far as regulations made under this section otherwise provide, where, in any proceedings, there is a net liability of the Fund on the account of any party, the amount of that liability shall be paid to the Board by that party, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him—
- (a) in the proceedings; or
- (b) under any settlement to avoid them or to bring them to an end.”.
- (7) Subsections (3) to (5) of that section shall cease to have effect.
- (8) In subsection (6) of that section, for the words “subsection (5)” there shall be substituted the words “ subsection (2A) or (2B) ”.
- (9) In subsection (8) of that section, for the words from “subsection” to the end there shall be substituted the words “ subsection (1) above and in section 33 of this Act to “fees and outlays” include references to sums which would have been payable to that solicitor if he had been so employed. ”
- (10) In subsection (4) of section 21 (scope and nature of criminal legal aid) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.
- (11) In subsection (8) of section 29 (legal aid in certain proceedings relating to children) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.
- (12) In subsection (4) of section 30 (legal aid in contempt proceedings) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.
- (13) In subsection (1) of section 31 (solicitors and counsel) of that Act, for the words “his counsel” there shall be substituted the words “ or a solicitor holding rights of audience by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, his counsel or such a solicitor ”.
- (14) In subsection (9)(b) of the said section 31, at the beginning there shall be inserted “ Subject to subsection (11) below, ”.
- (15) At the end of the said section 31 there shall be inserted the following subsection—
- “(11) Nothing in subsection (9)(b) above shall enable the Secretary of State to make regulations authorising the granting of legal aid only to solicitors holding rights of audience under section 25A (rights of audience) of the Solicitors (Scotland) Act 1980.”.
- (16) In subsection (3) of section 33 (fees and outlays of counsel and solicitors) of that Act—
- (a) in paragraph (c) the words “and taxation” and “or taxation”; and

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(b) in paragraph (d) the word “, taxation”, shall cease to have effect.

#### Commencement Information

**I88** Sch. 8 para. 36 partly in force; para. 36 not in force at Royal Assent see s. 75(2); para. 36(6) in force at 26.08.1991 by S.I. 1991/1903, art. 3, Sch.; para. 36(2)-(5)(10)-(15) in force at 30.9.1991 by S.I. 1991/2151, art 3, Sch.

#### *The Criminal Justice (Scotland) Act 1987 (c. 41)*

37 In section 6(1) of the Criminal Justice (Scotland) Act 1987 (definition of implicative gifts), for the words “mentioned in section 5(2) of this Act” there shall be substituted “on which, in respect of a person suspected of, or charged with, an offence to which section 1 of this Act relates, the warrant to arrest and commit was granted, or a restraint order was made (whichever first occurs).”

#### *The Court of Session Act 1988 (c. 36)*

38 For section 48 (limited right of audience of solicitor before the court) of the Court of Session Act 1988 there shall be substituted the following sections—

#### **“48 Right of audience of solicitor before the court.**

- (1) Any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980 a right of audience in relation to the Court of Session shall have the same right of audience in that court as is enjoyed by an advocate.
- (2) Any solicitor shall have a right of audience—
  - (a) before the vacation judge; and
  - (b) in such other circumstances as may be prescribed.

#### **48A Further provision as to rights of audience.**

Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the court as may be specified in an act of sederunt made under subsection (7)(a) of that section.”

#### *The Antarctic Minerals Act 1989 (c. 21)*

F5339 .....

#### Textual Amendments

**F53** Sch. 8 para. 39 repealed (1.11.1995) by 1994 c. 15, s. 33, Sch.; S.I. 1995/2748, art. 2



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## SCHEDULE 9

Section 74.

## REPEALS

**Extent Information**

**E2** Sch. 9 extends to Scotland only except as provided by s. 75(6)(7)

**Commencement Information**

**I89** Sch. 9 partly in force; Sch. 9 not in force at Royal Assent see s. 75(2); Sch. 9 in force in relation to specified repeals: at 1.12.1990 by S.I. 1990/2328; at 1.1.1991 by S.I. 1990/2624; at 1.4.1991 by S.I. 1991/330, art. 4, Sch., at 3.6.1991 and 15.8.1991 by S.I. 1991/1252, arts. 3, 4, Schs. 1, 2; at 26.8.1991 by S.I. 1991/1903, art. 3, Sch.; at 30.09.1991 by S.I. 1991/2151, art. 3, Sch.; at 17.3.1993 by S.I. 1993/641, art. 3, Sch.; at 1.3.1997 by 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

Chapter	Short title	Extent of repeal
1808 c. 149.	The Probate and Legacy Duties Act 1808.	In section 38, the words from “(which oath” to “administer”.
1858 c. 56.	The Confirmation of Executors (Scotland) Act 1858.	Section 11.
1875 c. 41.	The Intestates Widows and Children (Scotland) Act 1875.	In section 6, the words from the beginning to “affirmations.”.In Schedule A, the words from “All which” to the end.
1876 c. 24.	The Small Testate Estates (Scotland) Act 1876.	Section 6.In Schedule A, the words from “All which” to the end.
1900 c. 55.	The Executors (Scotland) Act 1900.	Section 8.
1907 c. 51.	The Sheriff Courts (Scotland) Act 1907.	In section 40, the words from “agents” to “1967”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, the words “lay observer appointed under section 49 of the Solicitors (Scotland) Act 1980”.
1976 c. 66.	The Licensing (Scotland) Act 1976.	In section 6, the words from “Provided that” to the end of the subsection.In section 18, in subsection (1), the words from “when” to the end.Section 55.Section 61.In section 97(2), the words “or supply”.Sections 131 and 132.In section 133(4), the words “and (6)”.In

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		Schedule 4, in paragraph 1, the words from “as” to “Act”, paragraphs 12, 13 and 14, in paragraph 15, the words “or 12 above”, paragraphs 16, 17 and 19 to 22.
1977 c. 50.	The Unfair Contract Terms Act 1977.	In section 15(1), the words “applies only to contracts,”.In section 25, subsections (3)(d) and (4).
1980 c. 46.	The Solicitors (Scotland) Act 1980.	In section 20(1), the word “and”.Section 27.Section 29.Section 31(3).Section 49.In section 63(1), the words “and to imprisonment for a period not exceeding one month”.In section 65(1), the definition of “lay observer”.In Schedule 4, in paragraph 1, the words “appointed by the Lord President” following subparagraph (b), and in paragraph 17, the words from “also” to “before the order” and the words from “and in such other manner” to the end.Schedule 5.
1981 c. 59.	The Matrimonial Homes (Family Protection) (Scotland) Act 1981.	In section 6(3)(e), the words “, at or before the time of the dealing,”.In section 8, in subsection (2), the words “before the granting of the loan”, and in subsection (2A), the words “at or before the granting of the security”.
1983 c. 2.	The Representation of the People Act 1983.	Section 42(3)(b).
1983 c. 12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	In Schedule 1, paragraph 7.
1985 c. 6.	The Companies Act 1985.	In section 38(1), the words “under the law of England and Wales”.In section 39(3), the words “or, in the case of a company registered in Scotland, subscribed in accordance with section 36B,”.In section 186, the words “(or,

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		in the case of a company registered in Scotland, subscribed in accordance with section 36B)".In section 188(2), the words "(or, in the case of a company registered in Scotland, subscribed in accordance with section 36B)".Section 462(2).
1985 c. 37.	The Family Law (Scotland) Act 1985.	In section 8(1)(a), the words "or the transfer of property".
1985 c. 73.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.	In Part I of Schedule 1, paragraphs 4 and 5.
1986 c. 45.	The Insolvency Act 1986.	Section 53(3).
1986 c. 47.	The Legal Aid (Scotland) Act 1986.	In section 4(3), paragraph (a) and, in paragraph (b), the words "a court".In section 13(2), the words "(so far as is necessary)".Section 17(3) to (5).In section 33(3), in paragraph (c), the words "and taxation" and "or taxation", and, in paragraph (d), the word "taxation".
1988 c. 34.	The Legal Aid Act 1988.	In paragraph 3 of Schedule 4, sub-paragraphs (b) and (c).
1988 c. 36.	The Court of Session Act 1988.	Section 5(g).
1989 c. 40.	The Companies Act 1989.	Section 130(3).In Schedule 17, paragraphs 1(2), 2(4), 8 and 10.

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