

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 Executory Services Board shall be a body corporate.
- 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.
- 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.
- 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
 - (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.
- 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.
- 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—

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- (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.

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.

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.
- 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.

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.

Performance of functions

- 11 (1) Subject to the provisions of this Schedule, the Board may do anything—

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- (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.
- (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.
- 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.

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.
- (3) No person shall be qualified to be appointed auditor under sub-paragraph (2) above unless he is a member of—
- (a) the Institute of Chartered Accountants of Scotland;
 - (b) the Institute of Chartered Accountants in England and Wales;
 - (c) the Chartered Association of Certified Accountants; or
 - (d) the Institute of Chartered Accountants in Ireland,
- but a firm may be so appointed if each of the partners is qualified to be so appointed.
- (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.

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.

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.

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- (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.

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.

Parliamentary disqualification

- 17 In Part II of Schedule 1 to the 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 Executry Services Board”.

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.
- 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

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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.

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.