

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.

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

- 1 The Scottish legal services ombudsman (the “ombudsman”) 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.
- 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.
- 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, with the consent of the Treasury, make a payment to that person of such amount as the Secretary of State may, with the consent of the Treasury, determine.
- 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 with the consent of the Treasury 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).
- 5 Neither the ombudsman nor his staff are, in such capacity, Crown servants.
- 6 The Secretary of State shall pay the expenses of the ombudsman and of his staff.
- 7 Without prejudice to section 33(3) of this Act, a professional organisation within the meaning of subsection (5) of that section shall furnish the ombudsman with such information as he may from time to time reasonably require.
- 8 Every such professional organisation shall, severally, consider any report which they may receive from the ombudsman, and shall notify him of any action which they have taken in consequence.
- 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.
- 10 The Secretary of State shall lay any report made to him under paragraph 9 above before each House of Parliament.
- 11 In Part III of Schedule 1 to the 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”.

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 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.

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 Sheriff Courts (Scotland) Act 1971 who is not otherwise eligible for appointment as a judge of the Court of Session.

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.

Further provision as to Inner House and exchequer causes

4 (1) The 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”.

Temporary judges

5 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 Secretary of State may determine, but, subject to paragraph 9 below, no such appointment shall extend beyond the date on which the person reaches the age of 75 years.

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- 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.
- 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.
- 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.
- 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 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.
- 10 The Secretary of State may pay to a person appointed under the said section 35(3) such remuneration as he may, with the consent of the Treasury, determine.
- 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.

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

- 12 (1) The Small Landholders (Scotland) Act 1911 shall be amended as follows.
- (2) For subsection (2) of section 3 (constitution of Scottish Land Court) there shall be substituted the following subsections—
- “(2) The Chairman shall be a person who at the date of his appointment is—
- (a) an advocate of the Scottish Bar of not less than ten years' standing; or
 - (b) without prejudice to paragraph (a) above, a sheriff principal or sheriff who has held office as such for a continuous period of not less than 10 years; or
 - (c) a solicitor who, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, has for a continuous period of not less than ten years had a right of audience in the Court of Session;
- and shall forthwith on his appointment have the same rank and tenure of office as if he had been appointed a judge of the Court of Session.
- (2A) Subsection (2)(b)

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above shall not confer any eligibility for appointment as Chairman on a temporary sheriff principal or sheriff appointed under section 11 (temporary sheriffs principal and sheriffs) of the Sheriff Courts (Scotland) Act 1971 who is not otherwise eligible for such appointment.”.

(3) For subsection (5) of section 3 there shall be substituted the following subsections—

“(5) The Secretary of State may appoint any person having the qualification required for holding the office of Chairman as a Deputy Chairman, who shall act in place of the Chairman for such periods as the Chairman may, with the consent of the Secretary of State, direct.

(5A) Where there is a vacancy in the office of Chairman, or where the Chairman is, for whatever reason, unable to act, the Deputy Chairman shall act at the direction of the Secretary of State.

(5B) A Deputy Chairman appointed under subsection (5)

above shall, while he is acting as Chairman, have the same powers and perform the same duties as if he were the Chairman.”.

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 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.
 - 3 (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,

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- 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.

SCHEDULE 6

Section 62.

SUPERVISED ATTENDANCE ORDERS: FURTHER PROVISIONS

- 1 (1) A court shall not make a supervised attendance order in respect of any offender unless—
- (a) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in which the offender resides, or will be residing when the order comes into force, to carry out the requirements of such an order;
 - (b) the court is satisfied that provision can be made under the arrangements mentioned in paragraph (a) above for the offender to carry out such requirements.
- (2) Before making a supervised attendance order, the court shall explain to the offender in ordinary language—
- (a) the purpose and effect of the order and in particular the obligations on the offender as specified in paragraph 3 below;
 - (b) the consequences which may follow under paragraph 4 below if he fails to comply with any of those requirements; and
 - (c) that the court has, under paragraph 5 below, the power to review the order on the application either of the offender or of an officer of the local authority in whose area the offender for the time being resides.

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- (3) The Secretary of State may by order direct that subsection (2) of section 6 of this Act shall be amended by substituting, for any number of hours specified in that subsection such other number of hours as may be specified in the order; and an order under this subsection may in making such amendment specify different such numbers of hours for different classes of case.
 - (4) An order under paragraph (3) above shall be made by statutory instrument, but no such order shall be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
 - 2 (1) A supervised attendance order shall—
 - (a) specify the locality in which the offender resides or will be residing when the order comes into force; and
 - (b) require the local authority in whose area the locality specified under paragraph (a) above is situated to appoint or assign a supervising officer.
 - (2) Where, whether on the same occasion or on separate occasions, an offender is made subject to more than one supervised attendance order, the court may direct that the requirements specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that at no time shall the offender have an outstanding number of hours during which he must carry out the requirements of these orders in excess of the largest number specified in section 62 of this Act.
 - (3) Upon making a supervised attendance order the court shall—
 - (a) give a copy of the order to the offender;
 - (b) send a copy of the order to the director of social work of the local authority in whose area the offender resides or will be residing when the order comes into force; and
 - (c) where it is not the appropriate court, send a copy of the order (together with such documents and information relating to the case as are considered useful) to the clerk of the appropriate court.
 - 3 (1) An offender in respect of whom a supervised attendance order is in force shall report to the supervising officer and notify him without delay of any change of address or in the times, if any, at which he usually works.
 - (2) Subject to paragraph 5(1) below, instructions given under a supervised attendance order shall be carried out during the period of twelve months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has carried out the instructions given under it for the number of hours specified in it.
 - (3) The instructions given by the supervising officer under the order shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.
- 4 (1) If at any time while a supervised attendance order is in force in respect of any offender it appears to the appropriate court, on evidence on oath from the supervising officer, that that offender has failed to comply with any of the requirements of paragraph 3 above or of the order (including any failure satisfactorily to carry out any instructions which he has been given by the supervising officer under the order), the court may issue a warrant for the arrest of that offender, or may, if it thinks fit, instead of issuing

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a warrant in the first instance issue a citation requiring the offender to appear before that court at such time as may be specified in the citation.

- (2) If it is proved to the satisfaction of the court before which an offender is brought or appears in pursuance of sub-paragraph (1) above that he has failed without reasonable excuse to comply with any of the requirements of paragraph 3 above or of the order (including any failure satisfactorily to carry out any instructions which he has been given by the supervising officer under the order), the court may—
- (a) revoke the order and impose such period of imprisonment as could, in respect of the original default or failure, have been imposed by the court which made the order if the order had not been made; or
 - (b) subject to section 62 of this Act and paragraph 2(2) above, vary the number of hours specified in the order.
- (3) The evidence of one witness shall, for the purposes of sub-paragraph (2) above, be sufficient evidence.
- 5 (1) Where a supervised attendance order is in force in respect of any offender and, on the application of that offender or of the supervising officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, that court may—
- (a) extend, in relation to the order, the period of twelve months specified in paragraph 3 above;
 - (b) subject to section 62 of this Act and paragraph 2(2) above, vary the number of hours specified in the order;
 - (c) revoke the order; or
 - (d) revoke the order and impose such period of imprisonment as could, in respect of the original default or failure, have been imposed by the court which made the order if the order had not been made.
- (2) If the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the locality for the time being specified under paragraph 2(1)(a) above to another locality and—
- (a) that court has been notified by the Secretary of State that arrangements exist for persons who reside in that other locality to carry out instructions under supervised attendance orders; and
 - (b) it appears to that court that provision can be made under those arrangements for him to carry out instructions under the order;
- that court may, and on application of the supervising officer shall, amend the order by substituting that other locality for the locality for the time being specified in the order; and the provisions of section 62 of this Act and of this Schedule shall apply to the order as amended.
- (3) Where the court proposes to exercise its powers under sub-paragraph (1)(a), (b) or (d) above otherwise than on the application of the offender, it shall issue a citation requiring him to appear before the court and, if he fails to appear, may issue a warrant for his arrest.
- 6 (1) The Secretary of State may make rules for regulating the carrying out of the requirements of supervised attendance orders.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may—

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- (a) limit the number of hours during which the requirements of an order are to be met on any one day;
 - (b) make provision as to the reckoning of time for the purposes of the carrying out of these requirements;
 - (c) make provision for the payment of travelling and other expenses in connection with the carrying out of these requirements;
 - (d) provide for records to be kept of what has been done by any person carrying out these requirements.
- (3) Rules under this paragraph shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- 7 The Secretary of State shall lay before Parliament each year, or incorporate in annual reports he already makes, a report of the operation of section 62 of this Act and this Schedule.
- 8 In section 27 of the Social Work (Scotland) Act 1968 (supervision of persons put on probation, released from prison or subject to community service orders)—
- (a) in subsection (1)(b) there shall be inserted at the end the following “; and
 - (iv) without prejudice to paragraphs (i) to (iii) above, persons in their area who are subject to supervised attendance orders under section 62 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”;
 - (b) for the words “probation and community service scheme”, wherever they occur, there shall be substituted the words “probation, community service and supervised attendance scheme”.
- 9 (1) In this Schedule—
- “the appropriate court”, in relation to a supervised attendance order, means the court having jurisdiction in the locality for the time being specified in the order under paragraph 2(1)(a) above, being a sheriff or district court according to whether the order has been made by a sheriff or a district court, but in a case where the order has been made by a district court and there is no district court in that locality, the sheriff court;
 - “local authority” and “supervising officer” have the same meanings respectively as in section 62 of this Act.
- (2) Except where the context otherwise requires, expressions used in this Schedule and in the Criminal Procedure (Scotland) Act 1975 have the same meanings in this Schedule as in that Act.

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.
- (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;

Status: This is the original version (as it was originally enacted).

- (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;
 - (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 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.
- ((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.

Status: This is the original version (as it was originally enacted).

- ((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

Grounds 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.
- ((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 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.

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

- ((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.

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

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.

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.

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.

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

Grounds 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:
- (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 Licensing (Scotland) Act 1976 shall be amended as follows.
- 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 (1)”
- 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—
- (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)—

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- (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—
 - “(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.”

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- 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.”

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.

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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;”;
- (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,”.
- (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

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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”.

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
 - (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”;

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- (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.”
- (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

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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”.

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
- (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;”; and
- (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,

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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 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

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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 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;”;
- (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—
- “(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;”;
- and
- (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”;
- and
- (b) after subsection (3) there shall be inserted the following subsection—

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“(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.
- (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

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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—

(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—

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“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
 - (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

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for inspection at the office of the Society during office hours by any person without payment of any fee.”.

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—

“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)

- 33 (1) The Companies Act 1985 shall be amended as follows.
- (2) In section 38(1) (appointment of attorney to execute deeds abroad), the words “under the law of England and Wales” shall cease to have effect.

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- (3) In section 39(3) (official seal for use abroad), the words “or, in the case of a company registered in Scotland, subscribed in accordance with section 36B,” shall cease to have effect.
- (4) In section 186 (share certificate to be evidence of title), the words “(or, in the case of a company registered in Scotland, subscribed in accordance with section 36B)” shall cease to have effect.
- (5) In section 188(2) (issue and effect of share warrant to bearer), the words “(or, in the case of a company registered in Scotland, subscribed in accordance with section 36B)” shall cease to have effect.
- (6) Subsection (2) of section 462 (power of company to create floating charges under Scots law) shall cease to have effect.

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)—
- (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

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- (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 a *probabilis 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.”
- (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,”.

Status: This is the original version (as it was originally enacted).

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

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.”.

Status: This is the original version (as it was originally enacted).

The Antarctic Minerals Act 1989 (c. 21)

- 39 In subsection (2) of section 7 of the Antarctic Minerals Act 1989 (which relates to the Secretary of State’s power to give directions), for the words “section 91 of the Court of Session Act 1868” there shall be substituted the words “section 45 of the Court of Session Act 1988”.

SCHEDULE 9

Section 74.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
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 Schedule 4, in paragraph 1, the words from “as” to “Act”, paragraphs 12, 13 and 14, in

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		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, in the case of a company

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		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.