



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

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Conveyancing and executry services*

#### 21 <sup>[F1]</sup>Council's] intervention powers.

- (1) The powers conferred on the <sup>[F2]</sup>Council] by this section may be exercised if, after such inquiry (if any) as the <sup>[F2]</sup>Council] consider appropriate, it appears to them to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an independent <sup>[F3]</sup>conveyancing practitioner] or an executry practitioner (each of whom is in this section referred to as a “relevant practitioner”).
- (2) The <sup>[F2]</sup>Council] may, in particular, exercise any such power where it appears to them that a relevant practitioner—
  - (a) is no longer a fit and proper person to provide conveyancing services or, as the case may be, executry services; <sup>[F4]</sup>or]
  - (b) has ceased, for whatever reason, to provide such services; <sup>F5</sup>...
  - <sup>F5F5</sup>(...) .....
- (3) The <sup>[F2]</sup>Council] may direct the relevant practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
  - (a) any assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent <sup>[F3]</sup>conveyancing practitioner] or, as the case may be, an executry practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.

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- (4) The [F<sup>2</sup>Council] may direct the relevant practitioner to transfer to the [F<sup>2</sup>Council], or to such persons (in this section referred to as “the trustees”) as may be specified in the direction—
- (a) all assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent [F<sup>3</sup>conveyancing practitioner] or, as the case may be, an executry practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (5) A relevant practitioner to whom a direction is given may, within 21 days of the date on which the direction is received by him, apply to the [F<sup>6</sup>court], which may make such order in the matter as it thinks fit.
- (6) A relevant practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to apply to the [F<sup>6</sup>court] under subsection (5) above).
- (7) If, on an application to the [F<sup>6</sup>court] by the [F<sup>2</sup>Council], the court is satisfied—
- (a) that a relevant practitioner has failed, within a reasonable time, to comply with any direction given to him; or
  - (b) that there is a reasonable likelihood that a relevant practitioner will so fail,
- the court may make an order requiring the practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.
- (8) Any assets which have been transferred as a result of a direction given under subsection (4) above shall be held by the [F<sup>2</sup>Council], or by the trustees, on trust for the client or, as the case may be, the practitioner concerned.
- (9) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the [F<sup>2</sup>Council].
- (10) If the [F<sup>2</sup>Council] have reasonable cause to believe that a relevant practitioner or an employee of a relevant practitioner has been guilty of dishonesty resulting in pecuniary loss to a client of the relevant practitioner, they may apply to the [F<sup>6</sup>court] for an order that no payment be made by any bank, building society or other body named in the order out of any bank, building society or other account or any sum deposited in the name of the relevant practitioner without the leave of the court and the court may make such an order.
- (11) Any direction under this section—
- (a) shall be given in writing;
  - (b) shall state the reason why it is being given;
  - (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the relevant practitioner); and
  - (d) may be varied or revoked by a further direction given by the [F<sup>2</sup>Council].
- [F<sup>7</sup>(11A) Where the Council make a direction under subsection (3) or (4) or apply to the court for an order under subsection (10), the Council shall notify the Commission to that effect and provide it with details of their findings in any inquiry held by virtue of subsection (1) as respects the practitioner concerned.]
- (12) In this section—

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“assets” includes any sum of money (in whatever form and whether or not in any bank, building society or other account) and any book, account, deed or other document held by the relevant practitioner on his own behalf in connection with his business as a relevant practitioner or on behalf of the client concerned; and

“independent [<sup>F3</sup>conveyancing practitioner]” and “executory practitioner” respectively include any independent [<sup>F3</sup>conveyancing practitioner] or executory practitioner whether or not he was registered as such at the time when the matter in relation to which the [<sup>F2</sup>Council] exercise or propose to exercise their powers under this section arose and notwithstanding that subsequent to that time he has ceased to be so registered.

#### Textual Amendments

- F1** Word in s. 21 heading substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(a)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F2** Word in s. 21 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(8)(a)**; S.S.I. 2003/384, art. 2(d)
- F3** Words in s. 21 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(8)(b)**; S.S.I. 2003/384, art. 2(d)
- F4** Word in s. 21(2) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(b)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F5** S. 21(2)(c) and preceding word repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(b)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F6** Words in s. 21(5)(6)(7)(10) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(c)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F7** S. 21(11A) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(d)** (with s. 77); S.S.I. 2008/311, art. 2(i)

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

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

- s. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)