

## SCHEDULE 4 MISCELLANEOUS PROVISION

### *Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)*

- 12 (1) The 1990 Act is amended in accordance with this paragraph.
- (2) For section 16 (the Scottish Conveyancing and Executry Services Board) there is substituted—

#### **“16 Regulation by the Law Society of conveyancing and executry services**

- (1) The Council of the Law Society of Scotland have the function of regulating the provision of conveyancing and executry services under sections 17 to 23 of this Act.
- (2) The Scottish Ministers may make grants to the Council towards expenses incurred, or to be incurred, by them in connection with the exercise of that function.
- (3) Any grant made under subsection (2) above may be made subject to such terms and conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate and they may vary such terms and conditions after the grant is made.”.
- (3) In section 17 (qualified conveyancers)—
- (a) for the word “Board” in each place where it appears there is substituted “Council”;
- (b) for the words “qualified conveyancer” and “qualified conveyancers” in each place where they appear there is substituted “conveyancing practitioner” and “conveyancing practitioners” respectively;
- (c) for the words “conveyancer” and “conveyancers” in each of the other places where they appear there is substituted “practitioner” and “practitioners” respectively;
- (d) for subsection (1) there is substituted—
- “(1) The Council shall establish and maintain a register of conveyancing practitioners, which shall be available for inspection by any person without charge.
- (1A) The register shall include an entry in respect of any person who was registered in the register of qualified conveyancers maintained by the Scottish Conveyancing and Executry Services Board immediately before the coming into force of this subsection.
- (1B) The entry in the register in respect of any such person who, immediately before the coming into force of this subsection, provided conveyancing services to the public for a fee, gain or reward shall be annotated to the effect that he is an independent conveyancing practitioner; but that annotation shall be removed if he ceases to provide such services for a fee, gain or reward.”;
- (e) in subsection (2)(b), for the words “(3) below” there is substituted “(11)(a) below and rules referred to in subsection (11B) below in so far as they relate to educational qualifications and practical training”;

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- (f) after subsection (2) there is inserted—
- “(2A) The Council may charge such fee for registration under subsection (2) above as they may determine.”;
- (g) subsection (3) is repealed;
- (h) for subsection (4) there is substituted—
- “(4) Where the Council—
- (a) grant an application under subsection (2) above, they may attach such conditions as they may determine, and shall—
- (i) record any such conditions against the applicant’s name in the register; and
- (ii) give the applicant written reasons for any decision to attach such conditions;
- (b) refuse such an application, they shall give the applicant written reasons for their decision.”;
- (i) for subsection (5) there is substituted—
- “(5) Where the Council—
- (a) grant an application under subsection (2) above subject to conditions; or
- (b) refuse such an application,
- the applicant may, within 21 days of the date on which the Council’s decision is intimated to him, apply to the Council to review their decision.”;
- (j) subsection (7) is repealed;
- (k) for subsection (11) there is substituted—
- “(11) The Council may make rules for regulating the conduct and practice of conveyancing practitioners, and such rules may, in particular, make provision with respect to—
- (a) educational qualifications and practical training (including continuing professional development);
- (b) the manner in which such practitioners conduct the provision of conveyancing services;
- (c) complaints against such practitioners; and
- (d) in the case of independent conveyancing practitioners—
- (i) conflicts of interest;
- (ii) the contractual obligations of such practitioners;
- (iii) the holding of and accounting for clients’ money;
- (iv) the disclosure of and accounting for commission; and
- (v) professional indemnity insurance and other arrangements for meeting claims by clients,
- and, in respect of the matters referred to in paragraphs (a) to (c) above, different provision may be made for different cases or classes of case.
- (11A) Rules made under subsection (11) above shall not have effect unless they have been approved by—

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- (a) the Lord President of the Court of Session; and
- (b) subject to section 40 of this Act, the Scottish Ministers.

(11B) Any—

- (a) rules as to the requirements to be satisfied by any person applying for registration as a qualified conveyancer; and
- (b) regulations as to the conduct and practice of independent qualified conveyancers,

having effect immediately before the coming into force of this subsection shall have effect with respect to conveyancing practitioners and independent conveyancing practitioners respectively as if they were rules made under subsection (11) above which have been approved in accordance with subsection (11A) above; and the Council may amend or repeal any such rules or regulations.”;

- (l) subsection (12) is repealed;
- (m) in subsection (13)—
  - (i) the words “, and subject to subsection (14) below” are repealed; and
  - (ii) paragraph (a) and the word “and” immediately following it are repealed;
- (n) subsections (14) and (15) are repealed;
- (o) in subsection (16)—
  - (i) for the words “an independent” there is substituted “a”; and
  - (ii) for the words “regulations made under subsection (11)” there is substituted “any rules made under subsection (11) above, any rules and regulations referred to in subsection (11B)”;
- (p) in subsection (20), the words “under subsection (7) above” are repealed.

(4) In section 18 (executory practitioners)—

- (a) for the word “Board” in each place where it appears there is substituted “Council”;
- (b) for subsection (1) there is substituted—

“(1) The Council shall establish and maintain a register of executory practitioners, which shall be available for inspection by any person without charge.

(1A) The register shall include an entry in respect of any person who was registered in the register of executory practitioners maintained by the Scottish Conveyancing and Executory Services Board immediately before the coming into force of this subsection.”;

- (c) in subsection (2), after the word “them” there is inserted “by a natural person”;
- (d) after that subsection there is inserted—

“(2A) The Council may charge such fee for registration under subsection (2) above as they may determine.”;

- (e) in subsection (3)—
  - (i) at the end of paragraph (a) there is inserted the word “and”;
  - (ii) in paragraph (b), for the words “prescribed by regulations made under subsection (10) below” there is substituted “of rules made

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- under subsection (10)(a) below and regulations referred to in subsection (10B) below in so far as such regulations relate to educational qualifications and practical training”;
- (iii) paragraph (c) and the word “and” immediately preceding it are repealed;
- (f) in subsection (5), in paragraph (a)—
- (i) after the word “shall” there is inserted “(i)”; and
  - (ii) at the end there is added “and
    - (ii) give the applicant written reasons for any decision to attach such conditions;”;
- (g) in subsection (6), and in subsection (7) in the first place where it appears, for the word “it” there is substituted “him”;
- (h) in subsection (8), for the words “its” and “it” there is substituted “his” and “he” respectively;
- (i) for subsection (10) there is substituted—
- “(10) The Council may make rules for regulating the conduct and practice of executry practitioners, and such rules may, in particular, make provision with respect to—
- (a) educational qualifications and practical training (including continuing professional development);
  - (b) the manner in which such practitioners conduct the provision of executry services;
  - (c) complaints against such practitioners; and
  - (d) in the case of such practitioners who provide executry services to the public for a fee, gain or reward—
    - (i) conflicts of interest;
    - (ii) the contractual obligations of such practitioners;
    - (iii) the holding of and accounting for clients' money;
    - (iv) the disclosure of and accounting for commission; and
    - (v) professional indemnity insurance and other arrangements for meeting claims by clients,
- and, in respect of the matters referred to in paragraphs (a) to (c) above, different provision may be made for different cases or classes of case.
- (10A) Rules made under subsection (10) above shall not have effect unless they have been approved by—
- (a) the Lord President of the Court of Session; and
  - (b) subject to section 40 of this Act, the Scottish Ministers.
- (10B) Any regulations as to the conduct and practice of executry practitioners having effect immediately before the coming into force of this subsection shall have effect as if they were rules made under subsection (10) above which have been approved in accordance with subsection (10A) above; and the Council may amend or repeal any such regulations.”;
- (j) subsection (11) is repealed;

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- (k) in subsection (12), for the words “regulations made under subsection (10)” there is substituted “any rules made under subsection (10) above, any regulations referred to in subsection (10B)”; and

- (l) after subsection (13) there is inserted—

“(13A) Subject to subsection (13B) below, an executry practitioner who provides executry services to the public for a fee, gain or reward shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(13B) Subsection (13A) above shall not apply to an executry practitioner who, with the approval of the Scottish Conveyancing and Executry Services Board, provided executry services to the public for a fee, gain or reward at any time before the coming into force of that subsection.”.

- (5) Section 19 is repealed.

- (6) In section 20 (professional misconduct, inadequate professional services, etc.)—

- (a) for the words “Board” and “Board’s” in each place where they appear (except where they appear in subsections (3) and (17)) there is substituted “Council” and “Council’s” respectively;

- (b) for the words “qualified conveyancer” and “qualified conveyancers” in each place where they appear there is substituted “conveyancing practitioner” and “conveyancing practitioners” respectively;

- (c) in subsection (1), in paragraph (c), for the words “regulations made under section 17(11) or 18(10)” there is substituted “rules made under section 17(11) or 18(10), or rules or regulations referred to in section 17(11B) or 18(10B),”;

- (d) in subsection (2)—

- (i) in paragraph (b), the words “or its” are repealed; and

- (ii) paragraphs (d), (e) and (g) are repealed;

- (e) after that subsection there is inserted—

“(2A) Where—

- (a) after holding an inquiry into a complaint against a practitioner, the Scottish Solicitors' Discipline Tribunal are satisfied that—

- (i) he has been guilty of professional misconduct; or

- (ii) he has provided inadequate professional services;

or

- (b) a practitioner has been convicted by any court of an act involving dishonesty or has been sentenced to a term of imprisonment of not less than 2 years,

the Tribunal may take such of the steps set out in subsection (2B) below as they think fit.

- (2B) The steps referred to in subsection (2A) above are—

- (a) to suspend or revoke the registration of the practitioner;

- (b) subject to subsection (3) below, to impose on the practitioner a fine not exceeding £10,000;

- (c) to censure the practitioner; and

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- (d) any of the steps which the Council may take in respect of a practitioner under subsection (2)(a) to (f) above.”;
- (f) in subsection (3), for the words “Board” and “Board's” there is substituted “Tribunal” and “Tribunal's” respectively;
- (g) in that subsection and in subsection (4), for the words “(2)(e)” there is substituted “(2B)(b)”;
- (h) in subsection (6)—
  - (i) for the word “they” there is substituted “, or the Scottish Solicitors' Discipline Tribunal, by virtue of subsection (2B)(d) above, make a similar direction, the Council or (as the case may be) the Tribunal”;
  - (ii) after the word “give” there is inserted “to the Council”; and
  - (iii) the words “or it” are repealed;
- (i) in subsection (8)—
  - (i) for the words “or (d)” there is substituted “above or the Scottish Solicitors' Discipline Tribunal, by virtue of subsection (2B)(d) above, take a similar step or the Tribunal take a step set out in subsection (2B)(a)”;
  - (ii) for paragraph (a) there is substituted—
    - “(a) any period specified in this section for applying for review or for the making of an appeal in respect of the matter has expired without such a review having been applied for or such an appeal having been made.”;
  - (iii) in paragraph (b), after the word “application” in each place where it appears there is inserted “or appeal”;
  - (iv) in that paragraph, after the word “Board's” there is inserted “or, as the case may be, Tribunal's”; and
  - (v) for the word “they” there is substituted “the Council”;
- (j) subsections (9) and (10) are repealed;
- (k) in subsection (11)—
  - (i) for the word “(g)” there is substituted “(f)”;
  - (ii) in paragraph (a), the words “it or” are repealed; and
  - (iii) in paragraph (b), for the words from “it” in the first place where it appears to the end there is substituted “him, appeal to the Scottish Solicitors' Discipline Tribunal against the decision made in any such review; and the Tribunal may quash, confirm or vary that decision”;
- (l) after subsection (11) there is inserted—
  - “(11A) Within 21 days of the date on which—
    - (a) the outcome of any appeal under subsection (11)(b) above; or
    - (b) the taking of any step referred to in subsection (2B) above, is intimated to the practitioner concerned, he may appeal to the Court of Session against the decision made by the Tribunal in the appeal or, as the case may be, to take such a step; and the Court may make such order in the matter as it thinks fit.”;
- (m) subsection (12) is repealed;
- (n) in subsection (14), after the word “(2)” there is inserted “or (2B)”;
- (o) in subsection (16), for the words “(2)(e)” there is substituted “(2B)(b)”;

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- (p) in subsection (17)—
  - (i) the words “it or” in each place where they appear are repealed; and
  - (ii) for the word “Board's” there is substituted “Council’s or, as the case may be, Tribunal's”.

(7) After section 20 there is inserted—

#### **“20A Review of decisions**

(1) The Council shall establish a procedure under which they shall, on the application of any aggrieved person, review any relevant decision made by them.

(2) In subsection (1) above—

(a) “relevant decision” means—

- (i) a refusal to grant an application for registration as a practitioner;
- (ii) a decision to grant an application for registration as a practitioner subject to conditions; or
- (iii) a decision to take any step set out in subsection (2)(a) to (f) of section 20 of this Act; and

(b) “aggrieved person” means the applicant or, as the case may be, the practitioner concerned.”.

(8) In section 21 (Board’s intervention powers)—

- (a) for the word “Board” in each place where it appears there is substituted “Council”;
- (b) for the words “qualified conveyancer” in each place where they appear there is substituted “conveyancing practitioner”; and
- (c) in subsection (2)(c), for the words from “regulations” to “18(10)” there is substituted “any rules or regulations referred to in section 20(1)(c)”.

(9) After section 21 there is inserted—

#### **“21A Powers of investigation**

(1) The Council may exercise the power conferred by subsection (3) below for any of the following purposes—

- (a) an inquiry under subsection (1) of section 20 of this Act;
- (b) a review under subsection (11)(a) of that section; and
- (c) consideration by the Council whether to exercise the powers conferred on them by section 21 of this Act.

(2) The Scottish Solicitors' Discipline Tribunal may exercise the power conferred by subsection (3) below for any of the following purposes—

- (a) an inquiry under subsection (2A) of section 20 of this Act; and
- (b) an appeal under subsection (11)(b) of that section.

(3) The Council or, as the case may be, the Tribunal may give notice in writing to a practitioner specifying the subject matter of their investigation and requiring either or both of the following—

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- (a) the production or delivery to any person appointed by the Council or, as the case may be, the Tribunal, at a time and place specified in the notice, of such documents so specified as are in the possession or control of the practitioner and relate to the subject matter of the investigation;
  - (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.
- (4) If a practitioner fails to comply with a notice under subsection (3)(a) above, the Council or, as the case may be, the Tribunal may apply to the Court of Session for an order requiring him 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.

### **21B Procedures of the Scottish Solicitors' Discipline Tribunal etc.**

- (1) Paragraphs 7 to 9, 11, 13 to 15 and 18A to 22 of Schedule 4 to the Solicitors (Scotland) Act 1980 (c. 46) (which make provision as to certain powers and procedures of the Scottish Solicitors' Discipline Tribunal) apply in relation to complaints made against conveyancing and executry practitioners as they apply in relation to complaints against solicitors, but as if—
- (a) in paragraph 8A, sub-paragraph (b) and the word “; or” immediately preceding it were omitted; and
  - (b) in paragraphs 9 and 19, the references to Part IV of that Act were references to sections 20 and 21A of this Act.
- (2) Paragraphs 7, 8, 11, 13 to 15 and 18A to 22 of that Schedule to that Act apply in relation to any appeal under subsection (11)(b) of section 20 of this Act as they apply, by virtue of subsection (1) above, in relation to any complaint against conveyancing and executry practitioners, and—
- (a) the modifications made to those paragraphs by paragraph 23(a), (b) and (d) of that Schedule apply for the purposes of that application of those paragraphs; and
  - (b) paragraphs 24 and 25 of that Schedule apply in relation to any such appeal as they apply in relation to an appeal to which those paragraphs apply, but as if the reference in paragraph 24 to Part IV of that Act were a reference to sections 20 and 21A of this Act.
- (3) In the case of a decision by the Scottish Solicitors' Discipline Tribunal—
- (a) to take any of the steps set out in subsection (2B) of section 20 of this Act; or
  - (b) in an appeal under subsection (11)(b) of that section, subsection (4) below applies.
- (4) Where this subsection applies and—
- (a) no appeal has been made to the Court under subsection (11A) of section 20 of this Act against the decision; or
  - (b) such an appeal has been made but has—
    - (i) been withdrawn; or
    - (ii) resulted in the Tribunal's decision being upheld,



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the clerk of the Tribunal shall send to the Council a copy of the decision of the Tribunal certified by him and the decision of the Court in any such appeal.

- (5) If the decision of the Tribunal so certified is to suspend or revoke the registration of the practitioner under paragraph (a) of subsection (2B) of section 20 of this Act, the Council shall—
- (a) give effect to the decision; and
  - (b) cause a note of the effect of the decision to be entered against the name of the practitioner in the register of conveyancing practitioners or, as the case may be, of executry practitioners.

### **21C Compensation fund**

- (1) The Council shall establish and maintain a fund for the purpose of making grants to compensate persons who in the opinion of the Council have suffered pecuniary loss by reason of dishonesty in connection with the provision of—
- (a) conveyancing services by or on behalf of an independent conveyancing practitioner; and
  - (b) executry services to the public for a fee, gain or reward by or on behalf of an executry practitioner.
- (2) The Council may, for the purpose of guaranteeing the sufficiency of the fund mentioned in subsection (1) above, enter into a contract of insurance with any person authorised by law to carry out insurance business.
- (3) The Scottish Ministers may—
- (a) make contributions to the fund mentioned in subsection (1) above; and
  - (b) defray any premium, fee or other expense payable by the Council under or in relation to a contract entered into under subsection (2) above.
- (4) The Council may, with the approval of the Scottish Ministers, make rules with regard to the operation of the fund mentioned in subsection (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 independent conveyancing practitioners and by executry practitioners who provide executry services to the public for a fee, gain or reward;
  - (b) the procedure for making claims against the fund; and
  - (c) the administration, management and protection of the fund.
- (5) The fund for the purpose of making grants to compensate persons by reason of dishonesty in connection with the provision of conveyancing and executry services maintained by the Scottish Conveyancing and Executry Services Board immediately before the coming into force of this subsection shall be transferred to and vested in the Council; and that fund shall be applied by the Council to the fund established under subsection (1) above.
- (6) Any rules as to the fund transferred under subsection (5) above having effect immediately before the coming into force of this subsection shall have effect

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with respect to the fund established under subsection (1) above as if they were rules made under subsection (4) above; and the Council may amend or repeal any such rules.”.

- (10) In section 22 (disclosure of documents etc)—
- (a) for the words “qualified conveyancer” there is substituted “conveyancing practitioner”;
  - (b) in subsection (1)—
    - (i) in paragraph (a), the words “or its” are repealed;
    - (ii) paragraph (b) and the word “or” immediately preceding it are repealed; and
    - (iii) for the words “conveyancer, practitioner or institution” there is substituted “practitioner”; and
  - (c) in subsection (2)—
    - (i) after paragraph (a) there is inserted the word “and”; and
    - (ii) paragraph (c) and the word “and” immediately preceding it are repealed.
- (11) In section 23 (interpretation of sections 16 to 22)—
- (a) the definition of “the Board” is repealed;
  - (b) after that definition there is inserted—
 

““conveyancing practitioner” means a person registered under section 17 in the register of conveyancing practitioners;”;
  - (c) in the definition of “conveyancing services”, after the word “thereto” there is inserted “, including (in the case of independent conveyancing practitioners) relevant notarial services”;
  - (d) after that definition there is inserted—
 

““the Council” means the Council of the Law Society of Scotland;”;
  - (e) for the definition of “independent qualified conveyancer” there is substituted—
 

““independent conveyancing practitioner” means a conveyancing practitioner whose entry in the register of conveyancing practitioners has been annotated to that effect under section 17(1B);”;
  - (f) in the definition of “practitioner”, for the words “qualified conveyancer” there is substituted “conveyancing practitioner”;
  - (g) the definition of “qualified conveyancer” is repealed;
  - (h) the definition of “recognised financial institution” and the word “and” immediately preceding it are repealed; and
  - (i) at the end there is added “; and
 

““relevant notarial services” means the functions exercisable by independent conveyancing practitioners by virtue of section 14(1) and (2) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”.
- (12) In section 33 (complaints in relation to legal services), in subsection (5)—
- (a) in the definition of “professional organisation”, paragraph (c) is repealed; and
  - (b) in the definition of “practitioner”—
    - (i) in paragraph (b), after the word “solicitor” there is inserted “or a practitioner within the meaning of section 23 of this Act”; and

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- (ii) paragraph (c) is repealed.
- (13) In section 34 (Scottish legal services ombudsman)—
  - (a) subsections (6), (7) and (8) are repealed; and
  - (b) in subsection (9)—
    - (i) paragraphs (c), (e) and (f) are repealed;
    - (ii) in paragraph (d), the words “subject to paragraph (e) below” are repealed; and
    - (iii) in paragraph (g), for the words “qualified conveyancers” there is substituted “conveyancing practitioners”.
- (14) In section 40 (advisory and supervisory functions of Director)—
  - (a) in subsection (1)—
    - (i) in paragraph (a), for the words “making any regulations” there is substituted “approving any rules made”; and
    - (ii) in paragraph (b), sub-paragraph (i) and the word “or” immediately following it are repealed; and
  - (b) in subsection (2), the word “regulations,” is repealed.
- (15) In section 42 (review of rules), in subsection (1)(a), the words “17(15) or” are repealed.
- (16) Schedule 1 (Scottish Conveyancing and Executry Services Board) is repealed.