

Status: Point in time view as at 19/03/2007.

Changes to legislation: Legal Profession and Legal Aid (Scotland) Act 2007, Cross Heading: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) is up to date with all changes known to be in force on or before 05 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULE 5 MINOR AND CONSEQUENTIAL MODIFICATIONS

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

- 3 (1) The 1990 Act is amended as follows.
- (2) In section 17 (conveyancing practitioners), after subsection (11B) insert—
- “(11C) Failure by a practitioner to comply with any rule made under subsection (11) or any rule or regulation referred to in subsection (11B) may be treated as professional misconduct or unsatisfactory professional conduct.”.
- (3) In section 18 (executory practitioners), after subsection (10B) insert—
- “(10C) Failure by a practitioner to comply with any rule made under subsection (10) or any rule or regulation referred to in subsection (10B) may be treated as professional misconduct or unsatisfactory professional conduct.”.
- (4) In section 20 (professional misconduct, inadequate professional services, etc. by conveyancing or executory practitioners)—
- (a) in the section title, the words “inadequate professional services,” are repealed;
- (b) in subsection (1)—
- (i) for the words “(whether or not following a complaint to them)” substitute “ into a conduct complaint remitted to them under section 6(a) or 15(5)(a) of the 2007 Act suggesting professional misconduct by a practitioner or that the circumstances referred to in paragraph (a)(ii) of section 2(1) of the 2007 Act apply as respects a practitioner ”;
- (ii) paragraphs (b) and (c) are repealed;
- (c) in subsection (2), paragraphs (a), (b) and (f) are repealed;
- (d) in subsection (2A)(a)—
- (i) for the word “complaint” substitute “ conduct complaint ”;
- (ii) for the words “the Scottish Solicitor's Discipline Tribunal” substitute “ the Tribunal ”;
- (iii) sub-paragraph (ii), and the word “or” following it, are repealed;
- (e) in subsection (2B)(d), for the word “(f)” substitute “ (c) ”;
- (f) in subsection (6)—
- (i) for the words “(a), (b) or (f)” substitute “ (a) or (b) ”;
- (ii) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;
- (iii) after the words “similar direction,” insert “ or where the Council make a direction under subsection (2)(ca) or the Tribunal make a direction under subsection (2B)(aa), ”;
- (g) in subsection (7), for the words “Court of Session” substitute “ court ”;
- (h) in subsection (8), for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;
- (i) in subsection (11)—
- (i) for the word “(f)” substitute “ (cb) ”;

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- (ii) in paragraph (b), for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;
 - (j) in subsection (11A)—
 - (i) for the words “Court of Session” substitute “ court ”;
 - (ii) for the word “Court”, where it second occurs, substitute “ court ”;
 - (k) after subsection (11E) (as inserted by section 57(2)(d) of this Act), insert—

“(11F) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in its favour bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.”;
 - (l) subsections (13), (14) and (15) are repealed;
 - (m) in subsection (16), after the word “subsection” insert “ (2)(cb) or ”.
- (5) In section 20A (review by Council of decisions), in subsection (2)(a)(iii) for the word “(f)” substitute “ (cb) ”.
- (6) In section 21 (intervention powers)—
- (a) in the section title, for the word “Board's” substitute “ Council's ”;
 - (b) in subsection (2)—
 - (i) after paragraph (a), insert “ or ”;
 - (ii) paragraph (c), and the preceding “or”, are repealed;
 - (c) in each of subsections (5), (6), (7) and (10), for the words “Court of Session” substitute “ court ”;
 - (d) after subsection (11), insert—

“(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.”.
- (7) In section 21A (powers of investigation in relation to conveyancing or executry practitioners)—
- (a) in subsection (1)—
 - (i) for the words “any of the following purposes—” substitute “ the purpose of ”;
 - (ii) paragraphs (a) and (b), and the word “and” following paragraph (b), are repealed;
 - (iii) in paragraph (c), for the words “the Council”, where it second occurs, substitute “ them ”;
 - (b) in subsection (2)—
 - (i) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;
 - (ii) in paragraph (b), for the words “(11)(b)” substitute “ (8A)(b), (11)(b) or (11ZC) ”.
- (8) In section 21B (procedures of Tribunal etc. in relation to conveyancing or executry practitioners)—
- (a) in the section title, for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;

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- (b) in subsection (1)—
 - (i) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;
 - (ii) for paragraph (a), substitute—
 - “(a) in paragraph 9(a)(i) and (b), the words “or, as the case may be, of provision of inadequate professional services” were omitted;”;
 - (c) in subsection (2)—
 - (i) for the words “(11)(b)” substitute “ (8A)(b), (11)(b) or (11ZC) ”;
 - (ii) after the words “section 20”, insert “, 20ZB(9), (10), (11) or (12) or 20ZE(1);
 - (iii) in paragraph (a), for the word “(b)” substitute “ (ca), (cc), (cd) ”;
 - (iv) in paragraph (b), after the words “this Act” insert “and as regards paragraph 25 also as if for the words “ the solicitor, the firm of solicitors or, as the case may be, the incorporated practice ” there were substituted “ the practitioner ”;
 - (d) in subsection (3)—
 - (i) for the words “the Scottish Solicitors' Discipline Tribunal” substitute “ the Tribunal ”;
 - (ii) in paragraph (b), for the words “(11)(b)” substitute “ (8A)(b), (11)(b) or (11ZC) ”;
 - (e) in subsection (4)—
 - (i) for the word “Court”, in both places where it occurs, substitute “ court ”;
 - (ii) in paragraph (a), after the word “(11A)” insert “ (11B), (11C) or (11D) ”.
- (9) In section 23 (interpretation of sections 16 to 22)—
- (a) before the definition of “conveyancing practitioner”, insert—
 - ““complainer” means the person who made the complaint and, where the complaint was made by the person on behalf of another person, includes that other person;”;
 - (b) after the definition of “the Council”, insert—
 - ““the court” means the Court of Session;”;
 - (c) the definition of “inadequate professional services” is repealed;
 - (d) after the definition of “relevant notarial services”, insert “;
“the Tribunal” means the Scottish Solicitors' Discipline Tribunal;
“unsatisfactory professional conduct” has the meaning given (as respects a conveyancing practitioner or, as the case may be, an executry practitioner) by section 46 of the 2007 Act”.
- (10) In section 25 (rights to conduct litigation and rights of audience)—
- (a) in subsection (2)(b)(ii), for the words “this section” substitute “ section 27 of this Act ”;
 - (b) in subsection (2)(c)(i), for the words “this section” substitute “ section 27 of this Act in the event of the application being granted ”;
 - (c) in subsection (2)(c)(ii)—

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- (i) for the words from “made” to “public” substitute “ remitted to the body under section 6(a) or 15(5)(a) of the 2007 Act ”;
 - (ii) the words “the actings of” are repealed;
 - (iii) for the words “this section” substitute “ section 27 of this Act in the event of the application being granted ”;
 - (d) in subsection (3), for the words “this section” substitute “ section 27 of this Act ”.
- (11) In section 33 (complaints in relation to legal services) after subsection (5) insert—
- “(6) This section does not apply to any element of a conduct complaint other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (12) In section 44, after the definition of “the 1980 Act” insert—
- ““the 2007 Act” means the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5).”.

Commencement Information

- II** Sch. 5 para. 3 partly in force; Sch. 5 para. 3 not in force at Royal Assent, see s. 82; Sch. 5 para. 3(10) in force at 19.3.2007 by S.S.I. 2007/140, art. 2; Sch. 5 para. 3(1)-(6)(7)(a)(i)(ii)(b)(8)(9)(11)(12) in force at 1.10.2008 by S.S.I. 2008/311, art. 2

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