

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – the Legal Profession

Chapter 3 – Solicitors and Other Representatives

The 1980 Act: further modification

Section 134 – Keeping the solicitors roll etc.

275. [Section 134](#) inserts new subsections after section 7(2) and section 12A(2) of the 1980 Act. These require the Council of the Society to enter on the roll of solicitors, the address of the place of business of every enrolled solicitor and registered European lawyer.

Section 135 – Removal from the roll etc.

276. [Section 135](#) amends sections 9 and 12C of the 1980 Act so that the Council of the Society must be satisfied that the solicitor or registered European lawyer has made adequate arrangements for any outstanding business before removing his or her name from the roll/register.

Section 136 – Restoration to the roll

277. [Section 136](#) amends sections 10 and 53 of the 1980 Act. The effect of these two amendments is that the Scottish Solicitors' Discipline Tribunal has the power to order that a solicitor, who has voluntarily removed his or her name from the roll, is prohibited from having his or her name restored to the roll except by order of that Tribunal.

Section 137 – Suspension from practice

278. [Section 137\(1\)](#) amends section 18 of the 1980 Act to allow the Council of the Society to suspend a solicitor's practising certificate if that solicitor has been convicted of an offence involving dishonesty or, following a conviction, has been sentenced to imprisonment for a term of 12 months or more or been fined an amount equivalent to level 4 on the standard scale or more. Subsection (3) makes similar provision in section 24F of the 1980 Act to allow the Council of the Society to suspend a registered European lawyer in the same circumstances.
279. [Section 137\(2\)](#) and (4) of the Act inserts new subsections into sections 19 and 24G of the 1980 Act that require a solicitor or registered European lawyer to notify the Council when:
- their practising/registration certificate, which had ceased to have effect because they have been detained under the Mental Health (Care and Treatment) (Scotland) Act 2003 or a guardian is appointed under the Adults with Incapacity (Scotland) Act 2000, comes back into effect again on their discharge;

*These notes relate to the Legal Services (Scotland) Act 2010
(asp 16) which received Royal Assent on 9 November 2010*

- their practising/registration certificate, which had ceased to have effect because a judicial factor had been appointed on their estate under section 41 of the 1980 Act comes back into effect again on the judicial factor being granted his discharge.

Section 138 – Accounts rules fee

280. **Section 138** inserts new section 37A into the 1980 Act. The effect is that an “accounts fee” is to be set by the Council of the Society and paid to the Society by each solicitor, incorporated practice, registered European or foreign lawyer, and multi-national practice who/which is required to contribute to the Guarantee Fund under Schedule 3 to the 1980 Act. The accounts fee is to be used to fund the Council’s function of securing compliance with the accounts rules.

Section 139 – Powers of Tribunal

281. **Section 139** amends section 53 of the 1980 Act and has three effects. Firstly, it provides that the Scottish Solicitors Discipline Tribunal (“the Tribunal”) can exercise its powers under subsection (2) of that section if a solicitor has been sentenced to a term of imprisonment of 12 months or more, or has been fined an amount equivalent to level 4 on the standard scale or more. Secondly, it provides that the Tribunal can order an incorporated practice to pay compensation to a complainer under subsection (2) of section 53 of the 1980 Act, as it can so order a solicitor at present. Finally, it provides that such compensation orders can be made against former solicitors or incorporated practices.