



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 4

#### THE LEGAL PROFESSION

### CHAPTER 3

#### SOLICITORS AND OTHER REPRESENTATIVES

#### *Guarantee Fund*

#### **128 Use of Guarantee Fund**

- (1) In section 43 (Guarantee Fund) of the 1980 Act—
- (a) in subsection (2)—
    - (i) the word “or” immediately preceding paragraph (b) is repealed,
    - (ii) in paragraph (b), after “director” insert “, member”,
    - (iii) after paragraph (b) insert “; or
  - (c) any licensed legal services provider or person within it in connection with its provision of legal services (with the same meaning as for Part 2 of the 2010 Act), even if—
    - (i) the Society is not its approved regulator, or
    - (ii) subsequent to the act concerned it has ceased to operate.”,
  - (b) in subsection (3)—
    - (i) in paragraph (cc), after “director” in the second place where it occurs insert “, member”,
    - (ii) after paragraph (cc) insert—
      - “(cd) to a licensed provider or any investor or person who owns, manages or controls or is within the licensed provider in respect of a loss suffered by it or any such person in connection with the licensed provider’s

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- provision of legal services by reason of dishonesty on the part of any such persons;”,
- (c) in subsection (7)(c), after “incorporated practice” insert “or a licensed provider”,
- (d) after subsection (7) insert—
- “(8) In the case of licensed providers, this section and Part I of Schedule 3 apply in relation to (and only to) such licensed providers as are regulated by an approved regulator that in furtherance of section 24(4) of the 2010 Act does not maintain its own compensation fund as referred to in that section.
- (9) In this section and paragraph 1 of Schedule 3—
- “approved regulator”,
- “investor”,
- are to be construed in accordance with Part 2 of the 2010 Act.”.
- (2) In section 43 of the 1980 Act—
- (a) in subsection (2), after paragraph (a) insert—
- “(aa) any conveyancing or executry practitioner or an employee of the practitioner in connection with the practitioner’s practice as such, even if subsequent to the act concerned the practitioner has ceased to provide conveyancing or executry services;”,
- (b) in subsection (3), after paragraph (c) insert—
- “(ca) to a conveyancing or executry practitioner in respect of a loss suffered by reason of dishonesty on the part of a partner or employee of the practitioner in connection with the practitioner’s practice as such;”.
- (3) Section 21C of the 1990 Act is repealed, but—
- (a) the fund maintained under subsection (1) of that section immediately before its repeal by this subsection continues to be vested in the Council, and
- (b) the Council is to apply that fund to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).

## **129 Contributions to the Fund**

- (1) In Schedule 3 (the Scottish Solicitors Guarantee Fund) to the 1980 Act, in paragraph 1—
- (a) in sub-paragraph (2A)—
- (i) the words “directors of incorporated practices” become head (a),
- (ii) after “directors” (in that head), insert “or members”,
- (iii) after that head (as so numbered) insert “, or
- (b) investors in licensed legal services providers.”,
- (b) in sub-paragraph (2B)—
- (i) the words from “by every” to the end become head (a),
- (ii) in that head (as so numbered), for “scale of such” substitute “relevant scale of annual corporate”,
- (iii) after that head (as so numbered) insert “, and

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- (b) by every licensed provider, in respect of each year during which or part of which it operates as such under the licence issued by its approved regulator, a contribution (also an “annual corporate contribution”) in accordance with the relevant scale of annual corporate contributions referred to in sub-paragraph (3).”,
  - (c) in sub-paragraph (3)—
    - (i) for “scale” in the first place where it occurs substitute “scales”,
    - (ii) the words from “, which scale” to the end are repealed,
  - (d) after sub-paragraph (3) insert—

“(3A) The scales of annual corporate contributions—

    - (a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—
      - (i) in the case of incorporated practices, the number of solicitors that they have as directors, members or employees,
      - (ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,
    - (b) may otherwise make different provision as between incorporated practices and licensed providers.”,
  - (e) in sub-paragraph (4), after “incorporated practice” insert “or a licensed provider”,
  - (f) in sub-paragraph (5), after “incorporated practice” insert “and licensed provider”,
  - (g) in sub-paragraph (8), after “incorporated practice” insert “or a licensed provider”.
- (2) In Schedule 3 to the 1980 Act, after paragraph 1B insert—

“1C (1) Paragraph 1 applies to a conveyancing or executry practitioner as it applies to a solicitor.

  - (2) But it does so with the following of its provisions to be disregarded—
    - (a) the reference in sub-paragraph (1) to an application for a practising certificate,
    - (b) sub-paragraphs (2), (2A), (6) and (9).
  - (3) If a conveyancing or executry practitioner fails to pay an annual contribution due by virtue of this paragraph, the Council may suspend (pending payment) the relevant entry in the register maintained by them under section 17(1) or 18(1) of the 1990 Act.
  - (4) For the purposes of section 43 and this paragraph, the references to a conveyancing or executry practitioner (or conveyancing or executry services) are to be construed in accordance with section 23 of the 1990 Act.”.
- (3) In Schedule 3 to the 1980 Act, in paragraph 3(2)—
  - (a) for “and incorporated practices” substitute “, incorporated practices and licensed providers”,

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- (b) for “or incorporated practice or practices” substitute “, incorporated practice or practices or licensed provider or providers”.

**130 Cap on individual claims**

In Schedule 3 to the 1980 Act—

- (a) in paragraph 4, after sub-paragraph (3) insert—

“(3A) The amount of an individual grant from the Guarantee Fund may not exceed £1.25 million.”,

- (b) after paragraph 4 insert—

- “5 (1) The Scottish Ministers may by regulations amend the sum specified in paragraph 4(3A).
- (2) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).
- (3) The power to make regulations under sub-paragraph (1) is exercisable by statutory instrument; but a statutory instrument containing any such regulations is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.