



Solicitors (Scotland) Act 1988

CHAPTER 42

ARRANGEMENT OF SECTIONS

Section

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Solicitors (Scotland) Act 1988

1988 CHAPTER 42

An Act to amend the Solicitors (Scotland) Act 1980; and for connected purposes. [29th July 1988]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. After section 42 of the Solicitors (Scotland) Act 1980 (in this Act referred to as "the 1980 Act") there shall be inserted the following sections—

"Powers where inadequate professional services alleged.

42A.—(1) Where—

- (a) the Council receive, from any person having an interest, a complaint that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and
- (b) the Council, after inquiry and after giving the solicitor an opportunity to make representations, uphold the complaint,

they may take such of the steps mentioned in subsection (2) as they think fit.

(2) The steps referred to in subsection (1) are—

- (a) to determine that the amount of the fees and outlays to which the solicitor shall be entitled for the services shall be—
 - (i) nil; or
 - (ii) such amount as the Council may specify in the determination,

and to direct the solicitor to comply, or secure compliance, with such of the requirements set out in subsection (3) as appear to them to be necessary to give effect to the determination;

Powers of Council of Law Society where inadequate professional services alleged. 1980 c. 46.

- (b) to direct the solicitor to secure the rectification at his own expense of any such error, omission or other deficiency arising in connection with the services as the Council may specify;
 - (c) to direct the solicitor to take, at his own expense, such other action in the interests of the client as the Council may specify.
- (3) The requirements referred to in subsection (2)(a) are—
- (a) to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the solicitor in connection with the services;
 - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (4) Before making a determination in accordance with subsection (2)(a) the Council may submit the solicitor's account for the fees and outlays to the Auditor of the Court of Session for taxation.
- (5) Where a solicitor in respect of whom a complaint of inadequate professional services is made was, at the time when the services were provided, an employee of another solicitor, a direction under this section shall specify and apply to that other solicitor as well as the solicitor in respect of whom the complaint is made.
- (6) The Council shall intimate a determination or direction made under this section to every solicitor specified in it by sending a copy of the determination or direction to him.
- (7) A solicitor in respect of whom a determination or direction has been made under this section may, within 21 days of the date on which the determination or direction is intimated to him, appeal to the Tribunal against the determination or direction.
- (8) In the foregoing provisions of this section—
- “client”, in relation to any matter in which a solicitor has been instructed, includes any person on whose behalf the person who gave the instructions was acting;
 - “complaint” includes a complaint of provision of inadequate professional services remitted to the Council by the Tribunal under paragraph 8A of Schedule 4; and
 - “solicitor” includes—
 - (a) any solicitor, whether or not he had a practising certificate in force at the time of provision of the professional services which are alleged to be inadequate, and notwithstanding that subsequent to that time

he has had his name removed from or struck off the roll, ceased to practise or been suspended from practice;

(b) a firm of solicitors, whether or not, since the provision of the professional services which are alleged to be inadequate—

(i) there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner; or

(ii) the firm has ceased to practise; and

(c) an incorporated practice, whether or not, since the provision of the professional services which are alleged to be inadequate—

(i) there has been any change in the persons exercising the management and control of the practice; or

(ii) the practice has ceased to be recognised by virtue of section 34(1A) or has been wound up.

Inadequate professional services: Council's powers to monitor compliance with directions.

42B.—(1) The Council shall, by notice in writing, require every solicitor specified in—

(a) a direction made under section 42A; or

(b) such a direction as confirmed or varied on appeal by—

(i) the Tribunal; or

(ii) the Court,

to give, within such period being not less than 21 days as the notice may specify, an explanation of the steps which he has taken to comply with the direction.

(2) Where an appeal is made under subsection (7) of section 42A against a direction made under that section, any notice under subsection (1)(a) above relating to that direction shall cease to have effect.

(3) Where an appeal is made by virtue of subsection (2) of section 53B against a decision of the Tribunal under subsection (1) of that section, any notice under subsection (1)(b)(i) above relating to the direction confirmed or varied by that decision shall cease to have effect.

(4) In this section "solicitor" has the same meaning as in section 42A(8)."

2. After section 42B of the 1980 Act (inserted in that Act by the preceding section of this Act) there shall be inserted the following section—

"Powers to examine documents and demand explanations in connection with complaints.

42C.—(1) Where the Council are satisfied that it is necessary for them to do so for the purpose of investigating a complaint made to them or remitted to them by the Tribunal alleging—

(a) professional misconduct by a solicitor;

Power of Council of Law Society to investigate complaints.

- (b) the failure of an incorporated practice to comply with any provision of this Act or of rules made under this Act applicable to that practice; or
 - (c) the provision by a solicitor or an incorporated practice of inadequate professional services,
- the Council may give notice in writing in accordance with subsection (2) to the solicitor or his firm or to the incorporated practice or, where the solicitor is an employee of a firm or of an incorporated practice, to his employer.

(2) A notice under subsection (1) may require—

- (a) the production or delivery to any person appointed by the Council, at a time and place specified in the notice, of all documents to which this section applies which are in the possession or control of the solicitor, firm or incorporated practice and relate to the matters to which the complaint relates (whether or not they relate also to other matters); and
- (b) an explanation, within such period, not being less than 21 days, as the notice may specify, from the solicitor, firm or incorporated practice regarding the matters to which the complaint relates.

(3) This section applies to the documents specified in section 38(2).

(4) Part II of Schedule 3 shall have effect in relation to the powers conferred by subsection (1) to require the production or delivery of documents as it has effect in relation to the powers conferred by section 38, but with the following modifications—

- (a) for the references in that Part to section 38 there shall be substituted references to this section; and
- (b) for the reference in paragraph 5(1) in that Part to a person failing to produce or deliver documents immediately on being required by the Council to do so there shall be substituted a reference to a person failing to produce or deliver the documents within the time specified in the notice under subsection (1) of this section.”

Functions of
Scottish Solicitors'
Discipline
Tribunal.

3. After section 53 of the 1980 Act there shall be inserted the following sections—

“Inadequate
professional
services: powers
of Tribunal.

53A.—(1) Subject to the other provisions of this Part where—

- (a) a complaint is made to the Tribunal that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and

- (b) the Tribunal, after inquiry and after giving the solicitor an opportunity to make representations, upholds the complaint,

it may take such of the steps mentioned in subsection (2) as it thinks fit.

(2) The steps referred to in subsection (1) are—

- (a) to determine that the amount of the fees and outlays to which the solicitor shall be entitled for the services shall be—

- (i) nil; or

- (ii) such amount as the Tribunal may specify in the determination,

and by order direct the solicitor to comply, or secure compliance, with such of the requirements set out in subsection (3) as appear to it to be necessary to give effect to the determination;

- (b) to direct the solicitor to secure the rectification at his own expense of any such error, omission or other deficiency arising in connection with the services as the Tribunal may specify;

- (c) to direct the solicitor to take, at his own expense, such other action in the interests of the client as the Tribunal may specify.

(3) The requirements referred to in subsection (2)(a) are—

- (a) to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the solicitor in connection with the services;

- (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.

(4) Before making a determination in accordance with subsection (2)(a) the Tribunal may submit the solicitor's account for the fees and outlays to the Auditor of the Court of Session for taxation.

(5) Where a solicitor in respect of whom a complaint of inadequate professional services is made was, at the time when the services were provided, an employee of another solicitor, a direction under this section shall specify and apply to that other solicitor as well as the solicitor in respect of whom the complaint is made.

(6) A direction of the Tribunal under this section shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(7) Section 54(1) shall apply to a direction of the Tribunal under this section (but not to a decision to submit an account for taxation under subsection (4)) as it applies to a decision of the Tribunal relating to discipline under this Act.

(8) In the foregoing provisions of this section “solicitor” and “client” have the same meanings as in section 42A(8).

Inadequate professional services: appeal to Tribunal against Council determination or direction.

53B.—(1) On an appeal to the Tribunal under section 42A(7) the Tribunal may quash, confirm or vary the determination or direction being appealed against.

(2) Section 54(1) shall apply to a decision of the Tribunal under subsection (1) as it applies to a decision of the Tribunal relating to discipline under this Act.

Inadequate professional services: enforcement by Tribunal of Council direction.

53C.—(1) Where a solicitor fails to comply with a direction given by the Council under section 42A (including, as the case may be, such a direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under section 42B(1), or such longer period as the Council may allow, the Council shall make a complaint to the Tribunal and may appoint a solicitor to represent them in connection with the complaint.

(2) If after inquiry into a complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, or such part of it as the Tribunal thinks fit, shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(3) Paragraph 9 of Schedule 4 shall not apply to a complaint made under subsection (1).”

Powers of Council of Law Society where excessive fees etc charged.

4. After section 39 of the 1980 Act there shall be inserted the following section—

“Powers where excessive fees etc charged.

39A.—(1) This section applies where the Council are satisfied, in the case of any solicitor or incorporated practice, after inquiry and after giving the solicitor or incorporated practice an opportunity of being heard, that the solicitor or incorporated practice has issued an account for professional fees and outlays of an amount which is grossly excessive (whether or not the account has been paid by or on behalf of the client or debited by the solicitor or incorporated practice to the account of any sums held on behalf of the client).

(2) Where this section applies the Council may—

(a) in the case of a solicitor, withdraw his practising certificate; or

- (b) in the case of an incorporated practice, withdraw the practising certificates of all or any of the solicitors who are directors of the incorporated practice;

and a certificate so withdrawn shall cease to have effect and the solicitor shall be suspended from practice as a solicitor.

(3) On being satisfied by the solicitor or, as the case may be, incorporated practice that he or it has complied with the requirements of subsection (4) the Council, unless they are of the opinion that the solicitor or incorporated practice is liable to disciplinary proceedings under Part IV, shall terminate the suspension from practice of the solicitor or solicitors concerned and shall restore to him or them any practising certificates held by him or them for the practice year then current.

(4) The requirements referred to in subsection (3) are—

- (a) to submit the account to the Auditor of the Court of Session for taxation together with all documents in the possession or control of the solicitor or incorporated practice which relate to the matters in respect of which the account was issued; and
- (b) to refund to the client a sum not less than the relevant amount.

(5) The Council shall be entitled to be represented at a diet for taxation by virtue of subsection (4)(a) and to make representations to the Auditor of Court.

(6) Where, on taxation of an account by virtue of subsection (4)(a), the amount due in respect of the account as taxed is the amount specified in the account as issued, the fee of the Auditor of Court shall be paid by the Council; but in any other case the fee shall be paid by the solicitor or, as the case may be, the incorporated practice.

(7) In subsection (4)(b) “the relevant amount” is the amount (if any) by which the sum received by the solicitor or incorporated practice in respect of the account exceeds the amount due in respect of the account as taxed.

(8) A solicitor may, within 21 days of receiving written notice of a decision of the Council under subsection (2) to withdraw his practising certificate, appeal to the Court against that decision; and on any such appeal the Court may give such directions in the matter, including directions as to the expenses of the proceedings before the Court, as it may think fit; and the order of the Court shall be final.

(9) The withdrawal of a solicitor’s practising certificate under subsection (2) shall be without prejudice to the operation of section 35(3) or section 37(8).”

SCHEDULES

SCHEDULE 1

Section 6(1).

AMENDMENTS TO SOLICITORS (SCOTLAND) ACT 1980

1. The Solicitors (Scotland) Act 1980 shall be amended in accordance with the following provisions of this Schedule. 1980 c. 46.
2. At the end of section 7 (keeping of roll of solicitors by the Council), there shall be added the following subsection—

“(4) Schedule 2 (powers of Council in relation to roll of solicitors) shall have effect.”
3. In section 9 (removal of name from roll of solicitors on request), for the words from “—(a)” to “satisfying the Tribunal” there shall be substituted the words “on the solicitor satisfying the Council”.
4. In section 10 (restoration of name to roll of solicitors on request)—
 - (a) in subsection (1), the words “whose name has been removed from the roll under section 9 or” shall cease to have effect; and
 - (b) after subsection (1) there shall be inserted the following subsection—

“(1A) On an application to the Council from a solicitor whose name has been removed from the roll under section 9 the Council may, after such inquiry as they think proper, restore the name of that solicitor to the roll.”
5. In section 15(2) (cases where notice of intention to apply for practising certificate required), after paragraph (i) there shall be inserted the following—

“; or

 - (j) while any thing required to be done by him by a direction of the Council under section 42A or of the Tribunal under section 53A (including any such direction as confirmed or varied on appeal) remains undone.”
6. After subsection (5) of section 19 (further provisions relating to suspension of practising certificates) there shall be inserted the following subsection—

“(5A) Where a solicitor is suspended from practice as a solicitor by virtue of paragraph (a) or (b) of section 18(1), the period of suspension shall, for the purposes of section 15(2)(f), expire on the solicitor ceasing to be liable to be detained or subject to guardianship or, as the case may be, on the *curator bonis* being discharged.”
7. In section 32(1)(b) (offence for unqualified person to draw or prepare writ relating to legal proceedings), for the words “legal proceedings” there shall be substituted the words “action or proceedings in any court”.
8. In section 33(b) (unqualified persons not entitled to fees, etc), the words “gives legal advice or” shall cease to have effect.
9. In section 35(1)(a) (accounts rules), after the words “subsection (2)” there shall be inserted the words “or with a building society”.
10. In section 36 (interest on client’s money)—
 - (a) in subsection (1)(a), after the word “bank” in the first place where it occurs there shall be inserted the words “or with a building society”; and
 - (b) in subsection (3), after the word “account” in the second place where it occurs there shall be inserted the words “at a bank or with a building society”.

- SCH. 1
11. In section 38(2)(b) (powers of Council where dishonesty alleged), for the word "it" in the second place where it occurs there shall be substituted the word "its".
12. In section 40(1) (powers of Council where accounts rules etc not complied with), after the words "incorporated practice" in the third place where they occur there shall be inserted the words "has failed or".
13. In section 41(a) (appointment of judicial factor), the words "to a material extent" shall cease to have effect.
14. In section 51 (complaints to Tribunal)—
- (a) in subsection (2), after the words "applicable to it" there shall be inserted the words "or a solicitor or an incorporated practice may have provided inadequate professional services";
 - (b) in subsection (3), after paragraph (e) there shall be added the following paragraph—
 - "(f) the lay observer."; and
 - (c) after subsection (3) there shall be added the following subsection—
 - "(4) Where a report is made to the Tribunal under subsection (2) the Tribunal may, if it thinks fit, appoint a solicitor to prosecute the complaint and the expenses of the solicitor, so far as not recoverable from the solicitor complained against, shall be paid out of the funds of the Tribunal."
15. In section 52(2) (rules of Tribunal), after paragraph (a) there shall be inserted the following paragraph—
- "(aa) for regulating the making, hearing and determining of appeals made to it under section 42A(7) or 53D(1);"
16. In section 53 (powers of Tribunal in relation to complaints)—
- (a) after paragraph (f) of subsection (2) there shall be added the following—
 - "; or
 - (g) order that an investment business certificate issued to a solicitor, a firm of solicitors or an incorporated practice be—
 - (i) suspended for such time as they may determine; or
 - (ii) subject to such terms and conditions as it may direct; or
 - (iii) revoked.";
 - (b) after subsection (3) there shall be inserted the following subsection—
 - "(3A) The powers conferred by subsection (2)(c), (d) and (e) may be exercised by the Tribunal—
 - (a) in relation to a former solicitor, notwithstanding that his name has been struck off the roll or that he has, since the date of the misconduct, conviction or sentence referred to in subsection (1)(a) or (b), ceased to practise as a solicitor or been suspended from practice;
 - (b) in relation to a body corporate which was formerly an incorporated practice, notwithstanding that the body has, since the date of the conviction or failure referred to in subsection (1)(c) or (d), ceased to be recognised as an incorporated practice by virtue of section 34(1A).";
 - (c) after subsection (6A) there shall be inserted the following subsections—
 - "(6B) Where the Tribunal make an order under subsection (2)(g), they may direct that the order shall take effect on the date on which it is intimated to the solicitor, firm or incorporated practice; and if any such direction is given the order shall take effect accordingly.

(6C) The Council shall give effect to any order of the Tribunal under subsection (2)(g).”;

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(d) in subsection (7)—

(i) for the words “or (6A)” there shall be substituted the words “, (6A) or (6B)”; and

(ii) after the words “(6A)” in the second place where they occur there shall be inserted the words “or (6B)”; and

(e) after subsection (7) there shall be inserted the following subsection—

“(7A) In subsection (2)(g), section 53D(1) and paragraph 16(h) of Schedule 4, “investment business certificate” means a certificate issued by the Council under Rule 2.2 of the Solicitors (Scotland) (Conduct of Investment Business) Practice Rules 1988.”; and

(f) in subsection (8)—

(i) after the word “amend” there shall be inserted “—(a)”; and

(ii) at the end there shall be added the following paragraph—

“(b) the definition of “investment business certificate” in subsection (7A) by substituting for the reference to Rule 2.2 of the Solicitors (Scotland) (Conduct of Investment Business) Practice Rules 1988, or such reference replacing that reference as may for the time being be specified in that subsection, a reference to such Practice Rule as may from time to time replace Rule 2.2.”

17. After section 53C (inserted by section 3 of this Act) there shall be inserted the following section—

“Suspension etc.
of investment
business
certificates:
appeal to
Tribunal.

53D.—(1) Where, in accordance with rules made under this Act, the Council suspend or withdraw an investment business certificate or impose conditions or restrictions on it the solicitor, firm of solicitors or incorporated practice to whom it was issued may, within 21 days of the date of intimation of the decision of the Council, appeal to the Tribunal against that decision.

(2) On an appeal to the Tribunal under subsection (1) the Tribunal may quash, confirm or vary the decision being appealed against.

(3) Section 54(1) shall apply to a decision of the Tribunal under subsection (2) as it applies to a decision of the Tribunal relating to discipline under this Act.”

18. In section 57(5) (fees for admission and enrolment of solicitors as notaries public), for the words from “fees” to the end there shall be substituted the words “reasonable fees as the clerk may fix”.

19. In section 61 (protection of banks in transactions with solicitors), after the word “bank” in each place where it occurs there shall be inserted the words “or building society”.

20. In section 65(1) (interpretation)—

(a) after the definition of “advocate” there shall be inserted the following definition—

““building society” means a building society within the meaning of the Building Societies Act 1986;”;

1986 c. 53.

(b) in the definition of “client account”, after the words “savings account” there shall be inserted the words “at a bank or with a building society”.

21. In Schedule 1 (constitution and proceedings of the Law Society of Scotland), in paragraph 7D for the words “entitled to attend and vote” there shall be substituted the word “voting”.

- SCH. 1 22. In Schedule 2 (provisions regarding maintenance of roll of solicitors)—
- (a) in paragraph 1, the words “The Lord President may authorise” shall cease to have effect and after the word “practicable” there shall be inserted the words “shall have power”; and accordingly in the heading to the Schedule, for the words “DIRECTIONS BY THE LORD PRESIDENT” there shall be substituted the words “POWERS OF THE COUNCIL”; and
 - (b) after paragraph 3 there shall be added the following paragraph—

“4. Subject to section 7(3), the Council may charge such reasonable fees (including an annual fee payable by enrolled solicitors) as they may fix in connection with the keeping of the roll.”
23. In Schedule 4 (constitution, procedure and powers of Tribunal)—
- (a) after paragraph 5(c) there shall be added the following—

“and

 - (d) there are present not more than 3 solicitor members for every lay member.”;
 - (b) after paragraph 8 there shall be inserted the following paragraph—

“8A. Where a complaint is made to the Tribunal by a person other than—

 - (a) the Council; or
 - (b) a person mentioned in section 51(3),

the Tribunal may remit the complaint to the Council.”;
 - (c) in paragraph 9, in each of sub-paragraphs (a)(i) and (b), after the word “Act” in the second place where it occurs there shall be inserted the words “or, as the case may be, of provision of inadequate professional services”;
 - (d) in paragraph 16—
 - (i) after sub-paragraph (e) there shall be inserted the following—

“; or
 - (f) containing a direction under section 53A or an order under section 53C(2); or
 - (g) confirming or varying a determination or direction of the Council on an appeal under section 42A(7); or
 - (h) ordering that an investment business certificate issued to a solicitor, a firm of solicitors or an incorporated practice be—
 - (i) suspended; or
 - (ii) subject to such terms and conditions as they may direct; or
 - (iii) revoked.”;
 - (ii) after the word “appeal” in the first place where it occurs there shall be inserted the words “(if any)”;
 - (iii) for “(e)” in the second place where it occurs there shall be substituted “(h)”;
 - (iv) after the words “53(6)” there shall be inserted the words “or (6B)”;
 - (e) after paragraph 22 there shall be added the following—

“Appeals

23. The foregoing provisions of Part II of this Schedule shall apply in relation to an appeal to the Tribunal under section 42A(7) or section 53D(1) as they apply in relation to a complaint, but with the following modifications—

- (a) for references to a complaint there shall be substituted references to an appeal; SCH. 1
- (b) for references to the respondent there shall be substituted references to the appellant;
- (c) paragraphs 8A, 9 and 10 shall not apply; and
- (d) in paragraph 19 the words “against a solicitor” shall be omitted.

24. Subject to Part IV, the Tribunal may dismiss an appeal without holding an inquiry if—

- (a) they are of the opinion that the appeal is manifestly ill-founded; or
- (b) the appellant fails to comply with any rule made under section 52.

25. The Tribunal shall give notice of the appeal to the person by whom the original complaint was made (referred to in this Schedule as “the complainer”) and to the Council and shall enquire into the matter, giving the appellant and the complainer reasonable opportunity to make representations to the Tribunal.”

24. In paragraph 9 of Schedule 6 (saving for non-qualified person to conduct certain proceedings), for the words “legal proceedings” there shall be substituted the words “action or proceedings in any court”.

SCHEDULE 2

Section 6(2).

REPEALS

Chapter	Short title	Extent of repeal
1980 c. 46.	The Solicitors (Scotland) Act 1980.	<p>In section 10(1), the words “whose name has been removed from the roll under section 9 or”.</p> <p>Section 11(2).</p> <p>Section 12.</p> <p>In section 18(2), the words “paragraphs (c), (d) or (e) of”.</p> <p>Section 19(2) and (3).</p> <p>In section 33(b), the words “gives legal advice or”.</p> <p>In section 35(1)(b)(i), the words from “designated” to “1959”.</p> <p>In section 36(1)(aa), the word “designated”.</p> <p>In section 41(a), the words “to a material extent”.</p> <p>In section 42(3)(a), the word “designated”.</p> <p>In section 57(4), the words “and the fees to be paid”.</p> <p>Section 60.</p> <p>In section 65(1), the definition of “designated building society”.</p>

SCH. 2

Chapter	Short title	Extent of repeal
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	In Schedule 2, in paragraph 1, the words "The Lord President may authorise". Section 25(c).

PRINTED IN ENGLAND BY J. A. DOLE
Controller and Chief Executive of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament.