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*Status: Point in time view as at 01/10/2008. This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Cross Heading: Conveyancing and executry services is up to date with all changes known to be in force on or before 15 August 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)*

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# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Conveyancing and executry services*

#### [<sup>F1</sup>16 [<sup>F1</sup>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.]

#### **Textual Amendments**

- F1** S. 16 substituted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), **Sch. 4 para. 12(2)**; S.S.I. 2003/384, art. 2(d)

#### **Commencement Information**

- II** S. 16 wholly in force at 1.4.1991. See s. 75(2) and [S.I. 1991/822](#), art. 3, **Schedule**.

#### 17 [<sup>F2</sup>Conveyancing practitioners].

- [<sup>F3</sup>(1) The Council shall establish and maintain a register of conveyancing practitioners, which shall be available for inspection by any person without charge.

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15 August 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)

(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.]

(2) Where, on an application made to them by a natural person in such form as they may determine, and on the provision of such information in connection with the application as they consider necessary, the [F4Council] are satisfied that the applicant—

(a) is a fit and proper person to provide conveyancing services as a [F2conveyancing practitioner]; and

(b) complies with the requirements of rules made under subsection [F5(11)(a) below and rules referred to in subsection (11B) below in so far as they relate to educational qualifications and practical training],

the [F4Council] shall grant the application and shall enter the applicant’s name in the register of [F2conveyancing practitioners].

[F6(2A) The Council may charge such fee for registration under subsection (2) above as they may determine.]

F7(3) .....

[F8(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.]

[F9(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.]

(6) Where the [F4Council] have reviewed a decision mentioned in subsection (5) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to him, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.

F10(7) .....

(8) Any person or body other than—

(a) an independent [F2conveyancing practitioner]; or

(b) a solicitor; or

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- (c) an incorporated practice within the meaning of section 65 of the 1980 Act (interpretation); or
  - (d) a multi-disciplinary practice within the meaning of that section, who employs a [F<sup>2</sup>conveyancing practitioner] under a contract of employment for the purpose of providing conveyancing services for persons other than himself or, as the case may be, themselves, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) Where a [F<sup>2</sup>conveyancing practitioner] applies to the [F<sup>4</sup>Council] to remove his name from the register the [F<sup>4</sup>Council] shall—
- (a) where, in the case of an independent [F<sup>2</sup>conveyancing practitioner], they are satisfied that he has made adequate arrangements with respect to the business he then has in hand; and
  - (b) in any other case, without further enquiry, grant the application and amend the register accordingly.
- (10) The [F<sup>4</sup>Council] shall send to the Keeper of the Registers of Scotland—
- (a) as soon as practicable after 1st April in each year, a list of all [F<sup>2</sup>conveyancing practitioners]; and
  - (b) written notice of any subsequent change to the register of [F<sup>2</sup>conveyancing practitioners].
- [F<sup>11</sup>(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—
- (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,

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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.]

[<sup>F12</sup>(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.]

<sup>F13</sup>(12) .....

(13) The [<sup>F4</sup>Council] shall, in relation to the provision of conveyancing services by independent [<sup>F2</sup>conveyancing practitioners]<sup>F14</sup> ...—

<sup>F15</sup>(a) .....

(b) make suitable arrangements (whether by means of insurance policies or otherwise) to secure that any successful claims made against such a [<sup>F16</sup>practitioner] in connection with the provision of conveyancing services are satisfied.

<sup>F17</sup>(14) .....

<sup>F17</sup>(15) .....

(16) It shall be the duty of—

(a) [<sup>F18</sup>a][<sup>F2</sup>conveyancing practitioner] to comply with the requirements of [<sup>F19</sup>any rules made under subsection (11) above, any rules and regulations referred to in subsection (11B)] above and any direction of the [<sup>F4</sup>Council] under section 20(2)(a) or (b) of this Act; and

(b) the [<sup>F4</sup>Council] to ensure such compliance.

(17) Where, under or by virtue of any enactment—

(a) a warrant of registration is required for recording any deed in the General Register of Sasines; or

(b) an application for registration is required for registering an interest in land in the Land Register of Scotland,

any reference in that or any other enactment or any subordinate instrument to such a warrant or application being signed by a solicitor or agent shall be construed as including a reference to the warrant or application being signed by a [<sup>F2</sup>conveyancing practitioner], and any enactment or subordinate instrument making provision as to the form of such a warrant or application shall, with the necessary modifications, apply in relation to a [<sup>F2</sup>conveyancing practitioner].

(18) A [<sup>F2</sup>conveyancing practitioner] who signs a warrant or application by virtue of subsection (17) above shall, in addition to any matters required to be specified after his signature by any enactment or subordinate instrument, specify the independent [<sup>F2</sup>conveyancing practitioner], solicitor or incorporated practice by whom he is employed or, where he is himself an independent [<sup>F2</sup>conveyancing practitioner], his designation as such.

(19) Any person who—

(a) wilfully and falsely—

(i) pretends to be a [<sup>F2</sup>conveyancing practitioner]; or

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- (ii) takes or uses any name, title, addition or description implying that he is a [F<sup>2</sup>conveyancing practitioner]; or
- (b) being a [F<sup>2</sup>conveyancing practitioner], provides conveyancing services at a time when his registration as such is suspended,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (20) Any [F<sup>2</sup>conveyancing practitioner] not registered as an independent [F<sup>2</sup>conveyancing practitioner]<sup>F20</sup> ... who—
- (a) wilfully and falsely—
- (i) pretends to be an independent [F<sup>2</sup>conveyancing practitioner]; or
- (ii) takes or uses any name, title, addition or description implying that he is an independent [F<sup>2</sup>conveyancing practitioner]; or
- (b) provides conveyancing 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.
- (21) Where an offence under subsection (19)(a) above is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
- (a) any director, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,
- he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (22) Where an offence under subsection (19)(a) above is committed by a partnership and is proved to have been committed with the consent or connivance of a partner, he (as well as the partnership) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (23) Any independent [F<sup>2</sup>conveyancing practitioner] who provides conveyancing services upon the account of, or for the profit of, any person other than—
- (a) a solicitor;
- (b) an incorporated practice within the meaning of section 65 of the 1980 Act;
- (c) a multi-disciplinary practice within the meaning of that section; or
- (d) another independent [F<sup>2</sup>conveyancing practitioner],
- knowing that person not to be a solicitor, incorporated practice, multi-disciplinary practice or independent [F<sup>2</sup>conveyancing practitioner], shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (24) Any rule imposed by any professional or other body which purports to prevent a solicitor or any person mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate etc.) from—
- (a) acting as an employee of an independent [F<sup>2</sup>conveyancing practitioner] in connection with the provision of conveyancing services; or
- (b) acting on behalf of an independent [F<sup>2</sup>conveyancing practitioner] in connection with the provision of such services,
- shall be of no effect.

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### Textual Amendments

- F2** Words in s. 17 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(b)**; S.S.I. 2003/384, art. 2(d)
- F3** S. 17(1)-(1B) substituted for s. 17(1) (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(d)**; S.S.I. 2003/384, art. 2(d)
- F4** Word in s. 17 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(a)**; S.S.I. 2003/384, art. 2(d)
- F5** Words in s. 17(2)(b) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(e)**; S.S.I. 2003/384, art. 2(d)
- F6** S. 17(2A) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(f)**; S.S.I. 2003/384, art. 2(d)
- F7** S. 17(3) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(g)**; S.S.I. 2003/384, art. 2(d)
- F8** S. 17(4) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(h)**; S.S.I. 2003/384, art. 2(d)
- F9** S. 17(5) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(i)**; S.S.I. 2003/384, art. 2(d)
- F10** S. 17(7) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(j)**; S.S.I. 2003/384, art. 2(d)
- F11** S. 17(11)-(11B) substituted for s. 17(11) (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(k)**; S.S.I. 2003/384, art. 2(d)
- F12** S. 17(11C) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(2)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F13** S. 17(12) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(l)**; S.S.I. 2003/384, art. 2(d)
- F14** Words in s. 17(13) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(m)(i)**; S.S.I. 2003/384, art. 2(d)
- F15** S. 17(13)(a) and word repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(m)(ii)**; S.S.I. 2003/384, art. 2(d)
- F16** Words in s. 17 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(c)**; S.S.I. 2003/384, art. 2(d)
- F17** S. 17(14)(15) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(n)**; S.S.I. 2003/384, art. 2(d)
- F18** Word in s. 17(16) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(o)(i)**; S.S.I. 2003/384, art. 2(d)
- F19** Words in s. 17(16) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(o)(ii)**; S.S.I. 2003/384, art. 2(d)
- F20** Words in s. 17(20) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(3)(p)**; S.S.I. 2003/384, art. 2(d)

### Commencement Information

- I2** s. 17 wholly in force at 1.3.1997; s. 17 not in force at Royal Assent see s. 75(2); s. 17(3)(11)-(15) in force at 30.9.1991 by S.I. 1991/2151, **art. 3**, Sch.; s. 17 in force at 1.3.1997 in so far as not already in force by S.I. 1996/2894, **art. 3**, **Sch** (as amended by S.I. 1996/2966, **art. 2**)

## 18 Executry practitioners.

- [<sup>F21</sup>(1) The Council shall establish and maintain a register of executry practitioners, which shall be available for inspection by any person without charge.

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- (1A) The register shall include an entry in respect of any person who was registered in the register of executry practitioners maintained by the Scottish Conveyancing and Executry Services Board immediately before the coming into force of this subsection.]
- (2) Where, on an application made to them [F22]by a natural person] in such form as they may determine, the [F23]Council] are satisfied that the applicant fulfils the conditions specified in subsection (3) below, the [F23]Council] shall grant the application and shall enter the applicant's name in the register of executry practitioners.
- [F24](2A) The Council may charge such fee for registration under subsection (2) above as they may determine.]
- (3) The conditions referred to in subsection (2) above are that the applicant—
- (a) is a fit and proper person to provide executry services; [F25]and]
  - (b) complies with the requirements [F26]of rules made 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]; [F27] ...
- [F27](3) .....
- (4) The [F23]Council] may require an applicant under subsection (2) above to provide such further information in connection with the application as they consider necessary.
- (5) Where the [F23]Council]—
- (a) grant an application under subsection (2) above, they may attach such conditions as they may determine, and shall
    - [F28](i) record any such conditions against the applicant's name in the register; [F29]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.
- (6) Where the [F23]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 [F23]Council]'s decision is intimated to [F30]him], apply to the [F23]Council] to review their decision.
- (7) Where the [F23]Council] have reviewed a decision mentioned in subsection (6) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to [F30]him], apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (8) Where an executry practitioner applies to the [F23]Council] to remove [F31]his] name from the register the [F23]Council] shall, if they are satisfied that the practitioner has made adequate arrangements with respect to the business [F31]he] then has in hand, grant the application and amend the register accordingly.
- (9) The [F23]Council] shall send to the Keeper of the Registers of Scotland and to each sheriff clerk—
- (a) as soon as practicable after 1st April in each year, a list of all executry practitioners; and

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- (b) written notice of any subsequent change to the register of executry practitioners.

[<sup>F32</sup>(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.]

[<sup>F33</sup>(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.]

<sup>F34</sup>(11) . . . . .

(12) It shall be the duty of—

- (a) an executry practitioner to comply with the requirements of [<sup>F35</sup>any rules made under subsection (10) above, any regulations referred to in subsection (10B) ] above and any direction of the [<sup>F23</sup>Council] under section 20(2)(a) or (b) of this Act; and
- (b) the [<sup>F23</sup>Council] to ensure such compliance.

(13) Any person who—

- (a) wilfully and falsely—
  - (i) pretends to be an executry practitioner; or
  - (ii) takes or uses any name, title, addition or description implying that he is an executry practitioner; or
- (b) being an executry practitioner, provides executry services at a time when his registration as such is suspended,



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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

[<sup>F36</sup>(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.]

(14) Where an offence under subsection (13) above is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—

- (a) any director, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(15) Where an offence under subsection (13) above is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the consent or connivance of a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### Textual Amendments

- F21** S. 18(1)(1A) substituted for s. 18(1) (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(b)**; S.S.I. 2003/384, art. 2(d)
- F22** Words in s. 18(2) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(c)**; S.S.I. 2003/384, art. 2(d)
- F23** Word in s. 18 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(a)**; S.S.I. 2003/384, art. 2(d)
- F24** S. 18(2A) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(d)**; S.S.I. 2003/384, art. 2(d)
- F25** Word in s. 18(3)(a) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(e)(i)**; S.S.I. 2003/384, art. 2(d)
- F26** Words in s. 18(3)(b) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(e)(ii)**; S.S.I. 2003/384, art. 2(d)
- F27** S. 18(3)(c) and word repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(e)(iii)**; S.S.I. 2003/384, art. 2(d)
- F28** Sub-para reference (i) in s. 18(5)(a) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(f)(i)**; S.S.I. 2003/384, art. 2(d)
- F29** S. 18(5)(a)(ii) and word added (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(f)(ii)**; S.S.I. 2003/384, art. 2(d)
- F30** Word in s. 18(6)(7) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(g)**; S.S.I. 2003/384, art. 2(d)
- F31** Words in s. 18(8) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(h)**; S.S.I. 2003/384, art. 2(d)
- F32** S. 18(10)-(10B) substituted for s. 18(10) (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(4)(i)**; S.S.I. 2003/384, art. 2(d)

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- F33** S. 18(10C) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), s. 82(2), **Sch. 5 para. 3(3)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F34** S. 18(11) repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), **Sch. 4 para. 12(4)(j)**; S.S.I. 2003/384, art. 2(d)
- F35** S. 18(12) substituted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), **Sch. 4 para. 12(4)(k)**; S.S.I. 2003/384, art. 2(d)
- F36** S. 18(13A)(13B) inserted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), **Sch. 4 para. 12(4)(l)**; S.S.I. 2003/384, art. 2(d)

**Commencement Information**

- I3** S. 18 wholly in force 1.3.1997; s. 18 not in force at Royal Assent see s. 75(2); s. 18(10)-(11) in force at 30.9.1991 by [S.I. 1991/2151](#), **art. 3**, Sch.; s. 18 in force at 1.3.1997 in so far as not already in force by [S.I. 1996/2894](#) art. 3, Sch. (as amended by [S.I. 1996/2966](#), **art. 2**)

PROSPECTIVE

**<sup>F37</sup>19 Executry services by recognised financial institutions.**

.....

**Textual Amendments**

- F37** S. 19 repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), **Sch. 4 para. 12(5)**; S.S.I. 2003/384, art. 2(d)

**20 Professional misconduct, <sup>F38</sup>... etc.**

(1) Where, after such inquiry as they consider appropriate [<sup>F39</sup>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] and after giving the practitioner concerned an opportunity to make representations, the [<sup>F40</sup>Council] are satisfied that a practitioner—

- (a) is guilty of professional misconduct;
- <sup>F41</sup>(b) .....
- <sup>F41</sup>(c) .....

(d) has been convicted of a criminal offence rendering him no longer a fit and proper person to provide conveyancing services as a [<sup>F42</sup>conveyancing practitioner] or, as the case may be, executry services as an executry practitioner,

they may take such of the steps set out in subsection (2) below as they think fit and shall, without prejudice to subsection (6) below, intimate their decision to the practitioner by notice in writing.

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

- <sup>F43</sup>(a) .....
- <sup>F43</sup>(b) .....

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- (c) to attach conditions (or, as the case may be, further conditions) to the registration of the practitioner or to vary any condition so attached;
  - [<sup>F44</sup>(ca) where the Council consider that the complainer has been directly affected by the professional misconduct or, as the case may be, the matter referred to in paragraph (d) of subsection (1), to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Council may specify to the complainer for loss, inconvenience or distress resulting from the misconduct or, as the case may be, the matter;
  - (cb) subject to subsection (2ZA) below, to impose on the practitioner a fine not exceeding £2,000;]
  - <sup>F45</sup>(d) .....
  - <sup>F45</sup>(e) .....
  - <sup>F43</sup>(f) .....
  - <sup>F45</sup>(g) .....
  - (h) to make a report of the [<sup>F40</sup>Council's] findings to any other person exercising functions with respect to—
    - (i) the practitioner; or
    - (ii) any person employed by or acting on behalf of the practitioner in connection with the provision of the services.
- [<sup>F46</sup>(2ZA) The Council shall not impose a fine under subsection (2)(cb) above where, in relation to the subject matter of the complaint, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (2ZB) Any fine imposed under subsection (2)(cb) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.]
- [<sup>F47</sup>(2A) Where—
- (a) after holding an inquiry into a [<sup>F48</sup>conduct complaint] against a practitioner, [<sup>F49</sup>the Tribunal] are satisfied that—
    - (i) he has been guilty of professional misconduct; or
    - <sup>F50</sup>(ii) .....
  - (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;
  - [<sup>F51</sup>(aa) where the practitioner has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;]
  - (b) subject to subsection (3) below, to impose on the practitioner a fine not exceeding £10,000;
  - (c) to censure the practitioner; and
  - (d) any of the steps which the Council may take in respect of a practitioner under subsection (2)(a) to [<sup>F52</sup>(c)] above.]

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- (3) The [F53Tribunal] shall not impose a fine under subsection [F54(2B)(b)] above where, in relation to the subject matter of the [F53Tribunal's] inquiry, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than two years.
- (4) Any fine imposed under subsection [F54(2B)(b)] above shall be treated for the purposes of [F55section 211(5) of the Criminal Procedure (Scotland) Act 1995] (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (5) The requirements referred to in subsection (2)(a) above are—
- (a) to refund, whether in whole 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 practitioner in connection with the services; and
  - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (6) Where the [F40Council] make a direction under subsection (2)[F56(a) or (b)] above [F57, or [F58the Tribunal], by virtue of subsection (2B)(d) above, make a similar direction, [F59or where the Council make a direction under subsection (2)(ca) or the Tribunal make a direction under subsection (2B)(aa),] the Council or (as the case may be) the Tribunal] shall, by notice in writing, require the practitioner to which the direction relates to give [F60to the Council], within such period being not less than 21 days as the notice may specify, an explanation of the steps which he [F61... has taken to comply with the direction.
- (7) Where a practitioner—
- (a) fails to comply with a notice under subsection (6) above; or
  - (b) complies with such a notice but the [F40Council] are not satisfied as to the steps taken by the practitioner to comply with the direction to which the notice relates,
- the [F40Council] may apply to the [F62court] for an order requiring the practitioner to comply with the direction to which the notice relates within such time as the court may order.
- (8) Where the [F40Council] take a step set out in subsection (2)(c) [F63above or [F64the Tribunal], by virtue of subsection (2B)(d) above, take a similar step or the Tribunal take a step set out in subsection (2B)(a)] above and—
- [F65(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;]
  - (b) where such an application [F66or appeal] is made, the matter is finally determined in favour of the [F40Council's][F67or, as the case may be, Tribunal's] decision or the application [F66or appeal] is withdrawn,
- [F68the Council] shall amend the register of executry practitioners or, as the case may be, the register of [F42conveyancing practitioners] accordingly.
- [F69(8A) Where the Council are satisfied that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner, the practitioner may—
- (a) before the expiry of the period of 21 days beginning with the day on which the finding by the Council to that effect is intimated to him, apply to the Council for a review by them of the finding;

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- (b) before the expiry of the period of 21 days beginning with the day on which the outcome of the review is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash or confirm the decision.]

<sup>F70</sup>(9) .....

<sup>F70</sup>(10) .....

(11) Where the [<sup>F40</sup>Council] take a step set out in subsection (2)(a) to [<sup>F71</sup>(cb)] above, the practitioner concerned may—

- (a) within 21 days of the date on which the [<sup>F40</sup>Council's] decision is intimated to <sup>F72</sup>... him, apply to the [<sup>F40</sup>Council] to review their decision; and
- (b) within 21 days of the date on which the outcome of such review is intimated to [<sup>F73</sup>him, appeal to [<sup>F74</sup>the Tribunal] against the decision made in any such review; and the Tribunal may quash, confirm or vary that decision]

<sup>F75</sup>(11ZA) Where the Council find that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner but do not direct him under subsection (2)(ca) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Council's finding is intimated to him, apply to the Council for a review by them of their decision not to direct the practitioner under subsection (2)(ca) to pay compensation.

(11ZB) A complainer to whom the Council have directed a practitioner under subsection (2)(ca) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, apply to the Council for a review by them of the direction.

(11ZC) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of the review under subsection (11ZA) or (11ZB) is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash, confirm or vary the decision.]

<sup>F76</sup>(11A) Within 21 days of the date on which—

- (a) the outcome of any appeal under subsection [<sup>F77</sup>(8A)(b) or] (11)(b) above; or
- <sup>F78</sup>(aa) [ a finding by the Tribunal that a practitioner is guilty of professional misconduct or that the circumstances mentioned in subsection (1)(d) apply as respects the practitioner; or]

(b) the taking of any step referred to in subsection (2B) above, is intimated to the practitioner concerned, he may appeal to the [<sup>F79</sup>court] against the decision made by the Tribunal in the appeal [<sup>F80</sup>the finding referred to in paragraph (aa) or, as the case may be, the decision] to take such a step; and the [<sup>F81</sup>court] may make such order in the matter as it thinks fit.]

<sup>F82</sup>(11B) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of any appeal under subsection (11ZC) is intimated to him, appeal to the court against the Tribunal's decision in the appeal.

(11C) Where after holding an inquiry into a complaint against a practitioner, the Tribunal find that he has been guilty of professional misconduct or that the circumstances referred to in subsection (2A)(b) apply as respects him, but do not direct the practitioner under subsection (2B)(aa) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's finding is intimated

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to him, appeal to the court against the decision of the Tribunal not to make a direction under that subsection.

(11D) A complainer to whom the Tribunal have directed a practitioner under subsection (2B) (aa) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the court against the amount of the compensation directed to be paid.

(11E) In an appeal under subsection (11C) or (11D), the court may make such order in the matter as it thinks fit.]

[<sup>F83</sup>(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.]

[<sup>F84</sup>(11G) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (2)(ca) or (2B)(aa) by substituting for the amount for the time being specified in that provision such other amount as they consider appropriate.

(11H) A statutory instrument containing an order under subsection (11G) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

<sup>F85</sup>(12) .....

<sup>F86</sup>(13) .....

<sup>F86</sup>(14) .....

<sup>F86</sup>(15) .....

(16) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend subsection [<sup>F87</sup>(2)(cb) or][<sup>F88</sup>(2B)(b)] above by substituting for the amount for the time being specified in that provision such other amount as appears to him to be justified by a change in the value of money.

(17) In this section “executry practitioner” and “[<sup>F42</sup>conveyancing practitioner]” respectively include any executry practitioner or [<sup>F42</sup>conveyancing practitioner] whether or not <sup>F89</sup>... he was registered as such at the time when the subject matter of the [<sup>F90</sup>Council’s or, as the case may be, Tribunal’s] inquiry occurred and notwithstanding that subsequent to that time <sup>F89</sup>... he has ceased to be so registered.

#### Textual Amendments

**F38** Words in s. 20 heading repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(a)** (with s. 77); S.S.I. 2008/311, art. 2(i)

**F39** Words in s. 20(1) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(b)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)

**F40** Words in s. 20 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(a)**; S.S.I. 2003/384, art. 2(d)

**F41** S. 20(1)(b)(c) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(b)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)

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- F42** Words in s. 20 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(b)**; S.S.I. 2003/384, art. 2(d)
- F43** S. 20(2)(a)(b)(f) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(c)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F44** S. 20(2)(ca)(cb) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(3)(a)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F45** S. 20(2)(d)(e)(g) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(d)(ii)**; S.S.I. 2003/384, art. 2(d)
- F46** S. 20(2ZA)(2ZB) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(3)(b)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F47** S. 20(2A)(2B) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(e)**; S.S.I. 2003/384, art. 2(d)
- F48** Words in s. 20(2A)(a) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(d)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F49** Words in s. 20(2A)(a) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(d)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F50** S. 20(2A)(a)(ii) and word repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(d)(iii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F51** S. 20(2B)(aa) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(3)(c)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F52** Word in s. 20(2B)(d) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(e)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F53** Words in s. 20(3) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(f)**; S.S.I. 2003/384, art. 2(d)
- F54** Words in s. 20(3)(4) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(g)**; S.S.I. 2003/384, art. 2(d)
- F55** Words in s. 20(4) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 78**
- F56** Words in s. 20(6) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(f)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F57** Words in s. 20(6) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(h)(i)**; S.S.I. 2003/384, art. 2(d)
- F58** Words in s. 20(6) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(f)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F59** Words in s. 20(6) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(f)(iii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F60** Words in s. 20(6) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(h)(ii)**; S.S.I. 2003/384, art. 2(d)
- F61** Words in s. 20(6) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(h)(iii)**; S.S.I. 2003/384, art. 2(d)
- F62** Word in s. 20(7) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(g)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F63** Words in s. 20(8) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(i)(i)**; S.S.I. 2003/384, art. 2(d)
- F64** Words in s. 20(8) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(h)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F65** S. 20(8)(a) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(i)(ii)**; S.S.I. 2003/384, art. 2(d)
- F66** Words in s. 20(8)(b) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(i)(iii)**; S.S.I. 2003/384, art. 2(d)
- F67** Words in s. 20(8)(b) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(i)(iv)**; S.S.I. 2003/384, art. 2(d)
- F68** Words in s. 20(8) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(i)(v)**; S.S.I. 2003/384, art. 2(d)

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been made appear in the content and are referenced with annotations. (See end of Document for details)

- F69** S. 20(8A) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 57(2)(a)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F70** S. 20(9)(10) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(j)**; S.S.I. 2003/384, art. 2(d)
- F71** Word in s. 20(11) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(i)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F72** Words in s. 20(11)(a) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(k)(ii)**; S.S.I. 2003/384, art. 2(d)
- F73** Words in s. 20(11)(b) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(k)(iii)**; S.S.I. 2003/384, art. 2(d)
- F74** Words in s. 20(11)(b) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(i)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F75** S. 20(11ZA)-(11ZC) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 57(2)(b)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F76** S. 20(11A) inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(l)**; S.S.I. 2003/384, art. 2(d)
- F77** Words in s. 20(11A)(a) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 57(2)(c)(i)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F78** S. 20(11A)(aa) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 57(2)(c)(ii)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F79** Word in s. 20(11A) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(j)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F80** Words in s. 20(11A) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 57(2)(c)(iii)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F81** Word in s. 20(11A) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(j)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F82** S. 20(11B)-(11E) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 57(2)(d)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F83** S. 20(11F) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(k)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F84** S. 20(11G)(11H) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 56(3)(d)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)
- F85** S. 20(12) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(m)**; S.S.I. 2003/384, art. 2(d)
- F86** S. 20(13)-(15) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(l)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F87** Words in s. 20(16) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(4)(m)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F88** Words in s. 20(16) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(o)**; S.S.I. 2003/384, art. 2(d)
- F89** Words in s. 20(17) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(p)(i)**; S.S.I. 2003/384, art. 2(d)
- F90** Words in s. 20(17) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(6)(p)(ii)**; S.S.I. 2003/384, art. 2(d)

## [<sup>F91</sup>20ZARemission of complaint by Tribunal to Council

- (1) Where, after holding an inquiry under section 20(2A) into a complaint of professional misconduct against a practitioner, the Tribunal—
- (a) are not satisfied that he has been guilty of professional misconduct;
  - (b) consider that he may be guilty of unsatisfactory professional conduct,
- they must remit the complaint to the Council.



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**Changes to legislation:** Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Cross Heading: Conveyancing and executry services is up to date with all changes known to be in force on or before 15 August 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)

- (2) Where the Tribunal remit a complaint to the Council under subsection (1), they may make available to the Council any of their findings in fact in their inquiry into the complaint under section 20(2A).]

#### Textual Amendments

**F91** Ss. 20ZA-20ZC inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 54(2), 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F91</sup>20ZBUnsatisfactory professional conduct

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—
- (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
  - (b) given the practitioner an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 20ZA, the Council—
- (a) must—
    - (i) notify the practitioner specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;
    - (ii) so investigate the complaint;
    - (iii) having so investigated the complaint and given the practitioner an opportunity to make representations, determine the complaint;
  - (b) may rely, in their investigation, on any findings in fact which the Tribunal make available to them under section 20ZA(2) as respects the complaint.
- (3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—
- (a) shall censure the practitioner;
  - (b) may take any of the steps mentioned in subsection (4) which they consider appropriate.
- (4) The steps are—
- (a) where the Council consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, to direct him to undertake such education or training as regards the law or legal practice concerned as the Council consider appropriate in that respect;
  - (b) subject to subsection (6) below, to direct the practitioner to pay a fine not exceeding £2,000;
  - (c) where the Council consider that the complainer has been directly affected by the conduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

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**Changes to legislation:** Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Cross Heading:

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- (5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the court upholding a complaint against the practitioner of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).
- (6) The Council shall not direct the practitioner to pay a fine under subsection (4)(b) above where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (8) The Council shall intimate—
  - (a) a determination under subsection (1) or (2);
  - (b) any censure under subsection (3)(a);
  - (c) any direction under subsection (4),
 to the complainer and the practitioner by sending to each of them a copy of the determination, the censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A practitioner in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—
  - (a) determination;
  - (b) direction (whether or not he is appealing against the determination).
- (10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.
- (11) Where the Council have upheld the conduct complaint but have not directed the practitioner under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.
- (12) A complainer to whom the Council have directed a practitioner under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.
- (13) The Scottish Ministers may by order made by statutory instrument—
  - (a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)(c) by

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substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

- (14) A statutory instrument containing an order under—
- (a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

#### Textual Amendments

**F91** Ss. 20ZA-20ZC inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 54(2), 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F91</sup>20ZC] **Unsatisfactory professional conduct: Council's powers to monitor compliance with direction under section 20ZB(4)**

- (1) The Council shall, by notice in writing, require every practitioner who is specified in—
- (a) a direction made under section 20ZB(4); or
  - (b) such a direction as confirmed or varied on appeal by—
    - (i) the Tribunal; or
    - (ii) the court,

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

- (2) Where an appeal is made under section 20ZB(9) or (12) or 20D(1) or (2) against a direction made under section 20ZB(4), any notice under subsection (1) above relating to the direction shall cease to have effect pending the outcome of the appeal.]

#### Textual Amendments

**F91** Ss. 20ZA-20ZC inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 54(2), 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F92</sup>20ZD] **Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council's powers**

- (1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner, they may direct him to undertake such education or training as regards conveyancing law or legal practice or, as the case may be, executry law or legal practice as they consider appropriate in the circumstances.
- (2) The Council shall by notice in writing—
- (a) intimate a direction under subsection (1) to the practitioner;
  - (b) require the practitioner to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (3) Where an appeal is made under section 20ZE(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.]

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### Textual Amendments

**F92** Ss. 20ZD, 20ZE inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 55\(2\), 82\(2\)](#) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F92</sup>20ZE Direction under section 20ZD(1): appeal by practitioner

- (1) A practitioner in respect of whom a direction has been made under section 20ZD(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.
- (2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.
- (3) The practitioner may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the court against the decision.
- (4) On an appeal to the court under subsection (3), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the court on an appeal under subsection (3) shall be final.]

### Textual Amendments

**F92** Ss. 20ZD, 20ZE inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 55\(2\), 82\(2\)](#) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F93</sup>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 [<sup>F94</sup>(cb)] of section 20 of this Act; and
  - (b) “ aggrieved person ” means the applicant or, as the case may be, the practitioner concerned. ]

### Textual Amendments

**F93** S. 20A inserted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 12\(7\)](#); S.S.I. 2003/384, art. 2(d)

**F94** Word in s. 20A(2)(a)(iii) substituted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), s. 82(2), [Sch. 5 para. 3\(5\)](#) (with s. 77); S.S.I. 2008/311, art. 2(i)

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## [<sup>F95</sup>20B Unsatisfactory professional conduct: powers of Tribunal on appeal

- (1) On an appeal to the Tribunal under section 20ZB(9) the Tribunal—
  - (a) may quash or confirm the determination being appealed against;
  - (b) if they quash the determination, shall quash the censure accompanying the determination;
  - (c) may quash, confirm or vary the direction being appealed against;
  - (d) may, where they consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, direct him to undertake such education or training as regards the law or legal practice concerned as the Tribunal consider appropriate in that respect;
  - (e) may, subject to subsection (5), fine the practitioner an amount not exceeding £2000;
  - (f) may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (2) On an appeal to the Tribunal under section 20ZB(10) the Tribunal—
  - (a) may quash the determination being appealed against and make a determination upholding the complaint;
  - (b) if they do so, may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
  - (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 20ZB(11) the Tribunal may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (4) On an appeal under section 20ZB(12) the Tribunal may quash, confirm or vary the direction being appealed against.
- (5) The Tribunal shall not direct the practitioner to pay a fine under subsection (1)(e) where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (6) Any fine directed to be paid under subsection (1)(e) shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (7) A direction of the Tribunal under this section is 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.
- (8) The Scottish Ministers may by order made by statutory instrument—
  - (a) amend subsection (1)(e) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

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- (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (9) A statutory instrument containing an order under—
- (a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

#### Textual Amendments

**F95** Ss. 20B-20E inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **54(3)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F95</sup>20C Unsatisfactory professional conduct: enforcement of Council direction

Where a practitioner fails to comply with a direction given by the Council under section 20ZB(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the court) before the expiry of the period specified in the notice relating to that direction given to the practitioner under section 20ZC(1), or such longer period as the Council may allow, the direction 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.]

#### Textual Amendments

**F95** Ss. 20B-20E inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **54(3)**, 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F95</sup>20D Unsatisfactory professional conduct: appeal from decisions of Tribunal

- (1) A practitioner in respect of whom a decision has been made by the Tribunal under section 20B(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the court against the decision.
- (2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 20B to which this subsection applies is intimated to him, appeal to the court against the decision.
- (3) Subsection (2) applies to the following decisions of the Tribunal under section 20B—
  - (a) a decision under subsection (1)(a) quashing the Council's determination upholding the complaint;
  - (b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the practitioner pay compensation;
  - (c) a decision under subsection (1)(f) directing the practitioner to pay compensation;
  - (d) a decision under subsection (2)(b) not to direct the practitioner to pay compensation;

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- (e) a decision under subsection (2)(c) confirming the Council's decision not to uphold the complaint;
  - (f) a decision under subsection (3) confirming the Council's decision not to direct the practitioner to pay compensation;
  - (g) a decision under subsection (4) quashing the Council's direction that the practitioner pay compensation or varying the amount of compensation directed to be paid.
- (4) On an appeal under subsection (1) or (2), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the court under subsection (4) shall be final.]

#### Textual Amendments

**F95** Ss. 20B-20E inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 54(3), 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

### [<sup>F95</sup>20E Unsatisfactory professional conduct: powers of court on appeal

- (1) On an appeal under section 20D, the court may—
- (a) fine the practitioner an amount not exceeding £2000;
  - (b) where it considers that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
  - (c) find the practitioner liable in any expenses which may be involved in the proceedings before it.
- (2) A decision of the court under subsection (1) shall be final.
- (3) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (1)(a) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
  - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (4) A statutory instrument containing an order under—
- (a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
  - (b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.]

#### Textual Amendments

**F95** Ss. 20B-20E inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 54(3), 82(2) (with s. 77); S.S.I. 2008/311, art. 2(c)

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## 21 [F96]Council's] intervention powers.

- (1) The powers conferred on the [F97]Council] by this section may be exercised if, after such inquiry (if any) as the [F97]Council] consider appropriate, it appears to them to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an independent [F98]conveyancing practitioner] or an executry practitioner (each of whom is in this section referred to as a “relevant practitioner”).
- (2) The [F97]Council] may, in particular, exercise any such power where it appears to them that a relevant practitioner—
  - (a) is no longer a fit and proper person to provide conveyancing services or, as the case may be, executry services; [F99]or]
  - (b) has ceased, for whatever reason, to provide such services; F100 ...
  - F100(c) .....
- (3) The [F97]Council] may direct the relevant practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
  - (a) any assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent [F98]conveyancing practitioner] or, as the case may be, an executry practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (4) The [F97]Council] may direct the relevant practitioner to transfer to the [F97]Council], or to such persons (in this section referred to as “the trustees”) as may be specified in the direction—
  - (a) all assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent [F98]conveyancing practitioner] or, as the case may be, an executry practitioner; or
  - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (5) A relevant practitioner to whom a direction is given may, within 21 days of the date on which the direction is received by him, apply to the [F101]court], which may make such order in the matter as it thinks fit.
- (6) A relevant practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to apply to the [F101]court] under subsection (5) above).
- (7) If, on an application to the [F101]court] by the [F97]Council], the court is satisfied—
  - (a) that a relevant practitioner has failed, within a reasonable time, to comply with any direction given to him; or
  - (b) that there is a reasonable likelihood that a relevant practitioner will so fail, the court may make an order requiring the practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.
- (8) Any assets which have been transferred as a result of a direction given under subsection (4) above shall be held by the [F97]Council], or by the trustees, on trust for the client or, as the case may be, the practitioner concerned.



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- (9) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the [F97Council].
- (10) If the [F97Council] have reasonable cause to believe that a relevant practitioner or an employee of a relevant practitioner has been guilty of dishonesty resulting in pecuniary loss to a client of the relevant practitioner, they may apply to the [F101court] for an order that no payment be made by any bank, building society or other body named in the order out of any bank, building society or other account or any sum deposited in the name of the relevant practitioner without the leave of the court and the court may make such an order.
- (11) Any direction under this section—
- (a) shall be given in writing;
  - (b) shall state the reason why it is being given;
  - (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the relevant practitioner); and
  - (d) may be varied or revoked by a further direction given by the [F97Council].
- [F102(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.]
- (12) In this section—
- “assets” includes any sum of money (in whatever form and whether or not in any bank, building society or other account) and any book, account, deed or other document held by the relevant practitioner on his own behalf in connection with his business as a relevant practitioner or on behalf of the client concerned; and
- “independent [F98conveyancing practitioner]” and “executry practitioner” respectively include any independent [F98conveyancing practitioner] or executry practitioner whether or not he was registered as such at the time when the matter in relation to which the [F97Council] exercise or propose to exercise their powers under this section arose and notwithstanding that subsequent to that time he has ceased to be so registered.

#### Textual Amendments

- F96** Word in s. 21 heading substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(a)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F97** Word in s. 21 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(8)(a)**; S.S.I. 2003/384, art. 2(d)
- F98** Words in s. 21 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(8)(b)**; S.S.I. 2003/384, art. 2(d)
- F99** Word in s. 21(2) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(b)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F100** S. 21(2)(c) and preceding word repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(b)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F101** Words in s. 21(5)(6)(7)(10) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(c)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F102** S. 21(11A) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(6)(d)** (with s. 77); S.S.I. 2008/311, art. 2(i)

**Status:** Point in time view as at 01/10/2008. This version of this cross heading contains provisions that are prospective.

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## [<sup>F103</sup>21A Powers of investigation

- (1) The Council may exercise the power conferred by subsection (3) below for [<sup>F104</sup>the purpose of]
  - <sup>F105</sup>(a) .....
  - <sup>F105</sup>(b) .....
  - (c) consideration by the Council whether to exercise the powers conferred on them by section 21 of this Act.
- (2) [<sup>F106</sup>The 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 [<sup>F107</sup>(8A)(b), (11)(b) or (11ZC)] 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—
  - (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.]

### Textual Amendments

**F103** Ss. 21A-21C inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, art. 2(d)

**F104** Words in s. 21A(1) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(7)(a)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)

**F105** S. 21A(1)(a)(b) and word repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(7)(a)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)

**F106** Words in s. 21A(2) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(7)(b)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)

**F107** Words in s. 21A(2)(b) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(7)(b)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)

## [<sup>F103</sup>21B Procedures of [<sup>F108</sup>the 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 [<sup>F109</sup>the Tribunal]) apply in relation to complaints made against conveyancing and executry practitioners as they apply in relation to complaints against solicitors, but as if—
  - <sup>F110</sup>(a) in paragraph 9(a)(i) and (b), the words “or, as the case may be, of provision of inadequate professional services” were omitted;]

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- (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 [F111(8A)(b), (11)(b) or (11ZC)] of section 20[F112, 20ZB(9), (10), (11) or (12) or 20ZE(1)] 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), [F113(ca), (cc), (cd)] 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 [F114] 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 ”].
- (3) In the case of a decision by [F115] the 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 [F116(8A)(b), (11)(b) or (11ZC)] of that section, subsection (4) below applies.
- (4) Where this subsection applies and—
- (a) no appeal has been made to the [F117] court] under subsection (11A) [F118(11B), (11C) or (11D)] 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,
- 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 [F117] 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.]

### Textual Amendments

- F103** Ss. 21A-21C inserted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), [Sch. 4 para. 12\(9\)](#); S.S.I. 2003/384, art. 2(d)
- F108** Words in s. 21B heading substituted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), s. 82(2), [Sch. 5 para. 3\(8\)\(a\)](#) (with s. 77); S.S.I. 2008/311, art. 2(i)
- F109** Words in s. 21B(1) substituted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), s. 82(2), [Sch. 5 para. 3\(8\)\(b\)\(i\)](#) (with s. 77); S.S.I. 2008/311, art. 2(i)
- F110** S. 21B(1)(a) substituted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), s. 82(2), [Sch. 5 para. 3\(8\)\(b\)\(ii\)](#) (with s. 77); S.S.I. 2008/311, art. 2(i)
- F111** Words in s. 21B(2) substituted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), s. 82(2), [Sch. 5 para. 3\(8\)\(c\)\(i\)](#) (with s. 77); S.S.I. 2008/311, art. 2(i)

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- F112** Words in s. 21B(2) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(c)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F113** Words in s. 21B(2)(a) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(c)(iii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F114** Words in s. 21B(2)(b) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(c)(iv)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F115** Words in s. 21B(3) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(d)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F116** Words in s. 21B(3)(b) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(d)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F117** Word in s. 21B(4) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(e)(i)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F118** Words in s. 21B(4)(a) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(8)(e)(ii)** (with s. 77); S.S.I. 2008/311, art. 2(i)

### [<sup>F103</sup>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 with

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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.]

### Textual Amendments

**F103** Ss. 21A-21C inserted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, art. 2(d)

## 22 Disclosure of documents etc.

- (1) Any communication made to or by—
- (a) an independent [<sup>F119</sup>conveyancing practitioner] or an executry practitioner in the course of his <sup>F120</sup>... acting as such for a client; or
  - <sup>F121</sup>(b) .....
- shall in any action or proceedings in any court be protected from disclosure on the ground of confidentiality between client and professional legal adviser in like manner as if the [<sup>F122</sup>practitioner] had at all material times been a solicitor acting for the client.
- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to confidentiality between client and professional legal adviser could be maintained, shall, with any necessary modifications, have effect in relation to—
- (a) an independent [<sup>F119</sup>conveyancing practitioner]; [<sup>F123</sup>and]
  - (b) an executry practitioner; <sup>F124</sup>...
  - <sup>F124</sup>(c) .....
- as it has effect in relation to a solicitor.

### Textual Amendments

**F119** Words in s. 22 substituted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(10)(a)**; S.S.I. 2003/384, art. 2(d)

**F120** Words in s. 22(1)(a) repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(10)(b)(i)**; S.S.I. 2003/384, art. 2(d)

**F121** S. 22(1)(b) and word repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(10)(b)(ii)**; S.S.I. 2003/384, art. 2(d)

**F122** Word in s. 22(1) substituted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(10)(b)(iii)**; S.S.I. 2003/384, art. 2(d)

**F123** Word in s. 22(2) inserted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(10)(c)(i)**; S.S.I. 2003/384, art. 2(d)

**F124** S. 22(2)(c) and word repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), s. 21(2), **Sch. 4 para. 12(10)(c)(ii)**; S.S.I. 2003/384, art. 2(d)

### Commencement Information

**I4** S. 22 partly in force; s. 22 not in force at Royal Assent see 75(2); s. 22(1)(a)(2)(a)(b) in force at 1.3.1997 by [S.I. 1996/2894](#), art. 3, **Sch.** and [S.I. 1996/2966](#), art. 2

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been made appear in the content and are referenced with annotations. (See end of Document for details)

## 23 Interpretation of sections 16 to 22.

In sections 16 to 22 of this Act and this section, except where the context otherwise requires—

<sup>F125</sup>

<sup>F126</sup> “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; ]

<sup>F127</sup> “conveyancing practitioner” means a person registered under section 17 in the register of conveyancing practitioners; ]

“conveyancing services” means the preparation of writs, contracts and other documents in connection with the transfer of heritable property and loans secured over such property, and services ancillary thereto<sup>F128</sup>, including (in the case of independent conveyancing practitioners) relevant notarial services], but does not include any services—

- (a) relating to the arranging of a loan; or
- (b) falling within section 1(1)(a) of the <sup>M1</sup>Estate Agents Act 1979;

<sup>F129</sup> “the Council” means the Council of the Law Society of Scotland; ]

<sup>F130</sup> “the court” means the Court of Session; ]

“executry practitioner” means a person registered under section 18 in the register of executry practitioners;

“executry services” means the drawing and preparation of papers on which to found or oppose an application for a grant of confirmation of executors and services in connection with the administration, ingathering, distribution and winding up of the estate of a deceased person by executors, but does not include anything which constitutes <sup>F131</sup>carrying on a regulated activity within the meaning of the Financial Services and Markets Act 2000];

<sup>F132</sup>

<sup>F133</sup> “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); ]

“practitioner” means an executry practitioner or a <sup>F134</sup>conveyancing practitioner];

<sup>F135</sup>

<sup>F136</sup> ... <sup>F137</sup>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). ]

<sup>F138</sup> “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 ].

### Textual Amendments

**F125** Definition in s. 23 repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 12\(11\)\(a\)](#); S.S.I. 2003/384, art. 2(d)

**F126** Definition "complainer" in s. 23 inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), s. 82(2), [Sch. 5 para. 3\(9\)\(a\)](#) (with s. 77); S.S.I. 2008/311, art. 2(i)

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- F127** Definition "conveyancing practitioner" in s. 23 inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(b)**; S.S.I. 2003/384, art. 2(d)
- F128** Words in s. 23 inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(c)**; S.S.I. 2003/384, art. 2(d)
- F129** Definition "the Council" in s. 23 inserted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(d)**; S.S.I. 2003/384, art. 2(d)
- F130** Definition "the court" in s. 23 inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(9)(b)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F131** Words in the definition of "executry services" in s. 23 substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 233**
- F132** Definition in s. 23 repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(9)(c)** (with s. 77); S.S.I. 2008/311, art. 2(i)
- F133** Definition in s. 23 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(e)**; S.S.I. 2003/384, art. 2(d)
- F134** Words in s. 23 substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(f)**; S.S.I. 2003/384, art. 2(d)
- F135** Definition in s. 23 repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(g)**; S.S.I. 2003/384, art. 2(d)
- F136** Definition in s. 23 and word preceding it repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(h)**; S.S.I. 2003/384, art. 2(d)
- F137** Definition "relevant notarial services" in s. 23 added (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 12(11)(i)**; S.S.I. 2003/384, art. 2(d)
- F138** Definitions "the Tribunal" and "unsatisfactory professional conduct" in s. 23 inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 82(2), **Sch. 5 para. 3(9)(d)** (with s. 77); S.S.I. 2008/311, art. 2(i)

#### Commencement Information

- I5** S. 23 wholly in force at 1.4.1991 see s. 75(2) and S.I. 1991/822, art. 3, **Schedule**.

#### Marginal Citations

- M1** 1979 c. 38.

**Status:**

Point in time view as at 01/10/2008. This version of this cross heading contains provisions that are prospective.

**Changes to legislation:**

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Cross Heading: Conveyancing and executry services is up to date with all changes known to be in force on or before 15 August 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.