



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

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Conveyancing and executry services*

#### 17 [F<sup>1</sup>Conveyancing practitioners].

- [F<sup>2</sup>(1) The Council shall establish and maintain a register of conveyancing practitioners, which shall be available for inspection by any person without charge.
- (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 [F<sup>3</sup>Council] are satisfied that the applicant—
- (a) is a fit and proper person to provide conveyancing services as a [F<sup>1</sup>conveyancing practitioner]; and
  - (b) complies with the requirements of rules made under subsection [F<sup>4</sup>(11)(a) below and rules referred to in subsection (11B) below in so far as they relate to educational qualifications and practical training],

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the [<sup>F3</sup>Council] shall grant the application and shall enter the applicant's name in the register of [<sup>F1</sup>conveyancing practitioners].

[<sup>F5</sup>(2A) The Council may charge such fee for registration under subsection (2) above as they may determine.]

<sup>F6</sup>(3) .....

[<sup>F7</sup>(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.]

[<sup>F8</sup>(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 [<sup>F3</sup>Council] 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.

<sup>F9</sup>(7) .....

(8) Any person or body other than—

- (a) an independent [<sup>F1</sup>conveyancing practitioner]; or
- (b) a solicitor; or
- (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 [<sup>F1</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 [<sup>F1</sup>conveyancing practitioner] applies to the [<sup>F3</sup>Council] to remove his name from the register the [<sup>F3</sup>Council] shall—

- (a) where, in the case of an independent [<sup>F1</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 [<sup>F3</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 [<sup>F1</sup>conveyancing practitioners]; and

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(b) written notice of any subsequent change to the register of [<sup>F1</sup>conveyancing practitioners].

[<sup>F10</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,

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>F11</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>F12</sup>(12) .....

(13) The [<sup>F3</sup>Council] shall, in relation to the provision of conveyancing services by independent [<sup>F1</sup>conveyancing practitioners]<sup>F13</sup>...—

- <sup>F14</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>F15</sup>practitioner] in connection with the provision of conveyancing services are satisfied.

<sup>F16</sup>(14) .....

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<sup>F16</sup>(15) .....

(16) It shall be the duty of—

- (a) [<sup>F17</sup>a][<sup>F1</sup>conveyancing practitioner] to comply with the requirements of [<sup>F18</sup>any rules made under subsection (11) above, any rules and regulations referred to in subsection (11B)] above and any direction of the [<sup>F3</sup>Council] under section 20(2)(a) or (b) of this Act; and
- (b) the [<sup>F3</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>F1</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>F1</sup>conveyancing practitioner].

(18) A [<sup>F1</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>F1</sup>conveyancing practitioner], solicitor or incorporated practice by whom he is employed or, where he is himself an independent [<sup>F1</sup>conveyancing practitioner], his designation as such.

(19) Any person who—

- (a) wilfully and falsely—
  - (i) pretends to be a [<sup>F1</sup>conveyancing practitioner]; or
  - (ii) takes or uses any name, title, addition or description implying that he is a [<sup>F1</sup>conveyancing practitioner]; or
- (b) being a [<sup>F1</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 [<sup>F1</sup>conveyancing practitioner] not registered as an independent [<sup>F1</sup>conveyancing practitioner]<sup>F19</sup>... who—

- (a) wilfully and falsely—
  - (i) pretends to be an independent [<sup>F1</sup>conveyancing practitioner]; or
  - (ii) takes or uses any name, title, addition or description implying that he is an independent [<sup>F1</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—

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- (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 [<sup>F1</sup>conveyancing practitioner] who provides [<sup>F1</sup>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;
  - [<sup>F20</sup>(ba) a licensed legal services provider within the meaning of Part 2 of the Legal Services (Scotland) Act 2010;]
  - [<sup>F21</sup>(c) .....
  - (d) another independent [<sup>F1</sup>conveyancing practitioner],
- knowing that person not to be a solicitor, incorporated practice [<sup>F22</sup>, licensed provider]<sup>F23</sup>... or independent [<sup>F1</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 [<sup>F1</sup>conveyancing practitioner] in connection with the provision of conveyancing services; or
  - (b) acting on behalf of an independent [<sup>F1</sup>conveyancing practitioner] in connection with the provision of such services,
- shall be of no effect.

#### Textual Amendments

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)

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- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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)
- F16** 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)
- F17** 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)
- F18** 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)
- F19** 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)
- F20** S. 17(23)(ba) inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 123(7)(a)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F21** S. 17(23)(c) repealed (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 124(2)(f)(i)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F22** Words in s. 17(23) inserted (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 123(7)(b)**, 150(2); S.S.I. 2012/152, art. 2, sch.
- F23** Words in s. 17(23) repealed (2.7.2012) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 124(2)(f)(ii)**, 150(2); S.S.I. 2012/152, art. 2, sch.

#### Commencement Information

- I1** 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**)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)