



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART II

LEGAL SERVICES

Conveyancing and executry services

18 Executry practitioners.

[^{F1}(1) The Council shall establish and maintain a register of executry 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 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 [^{F2}by a natural person] in such form as they may determine, the [^{F3}Council] are satisfied that the applicant fulfils the conditions specified in subsection (3) below, the [^{F3}Council] shall grant the application and shall enter the applicant's name in the register of executry practitioners.

[^{F4}(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; [^{F5}and]
- (b) complies with the requirements [^{F6}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]; ^{F7}...

^{F7}(3)

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- (4) The [F³Council] 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 [F³Council]—
- (a) grant an application under subsection (2) above, they may attach such conditions as they may determine, and shall
 - [F⁸(i)] record any such conditions against the applicant’s name in the register; [F⁹and
 - (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 [F³Council]—
- (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 [F³Council]’s decision is intimated to [F¹⁰him], apply to the [F³Council] to review their decision.
- (7) Where the [F³Council] 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 [F¹⁰him], 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 [F³Council] to remove [F¹¹his] name from the register the [F³Council] shall, if they are satisfied that the practitioner has made adequate arrangements with respect to the business [F¹¹he] then has in hand, grant the application and amend the register accordingly.
- (9) The [F³Council] 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
 - (b) written notice of any subsequent change to the register of executry practitioners.
- [F¹²(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,

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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.]

[^{F13}(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.]

^{F14}(11)

(12) It shall be the duty of—

- (a) an executry practitioner to comply with the requirements of [^{F15}any rules made under subsection (10) above, any regulations referred to in subsection (10B)] above and any direction of the [^{F3}Council] under section 20(2)(a) or (b) of this Act; and
- (b) the [^{F3}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,

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

[^{F16}(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.

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- (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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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)
- F16** 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

- I1** 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](#))

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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\(11\)](#)