

SCHEDULE 5
MINOR AND CONSEQUENTIAL MODIFICATIONS

Solicitors (Scotland) Act 1980 (c. 46)

- 1 (1) The 1980 Act is amended as follows.
- (2) In section 3A(5) (discharge of functions of Council of Law Society)—
 - (a) in paragraph (a)—
 - (i) at the beginning, insert “that”;
 - (ii) for the word “, or”, where it first occurs, substitute “;
 - (aa) that under section 47(2) of the 2007 Act of determining what action to propose, or take, as respects a conduct complaint remitted to them under section 6(a) or 15(5)(a) of that Act;
 - (ab) that under—
 - (i) section 42ZA(1) or (2) of this Act or section 20ZB(1) or (2) of the 1990 Act of determining whether or not to uphold a conduct complaint so remitted which suggests unsatisfactory professional conduct;
 - (ii) section 42ZA(3)(b) of this Act or section 20ZB(3)(b) of the 1990 Act of determining what steps to take when upholding such a conduct complaint;
 - (ac) that under section 51(1) of this Act of determining whether or not to make a complaint to the Tribunal as respects a conduct complaint so remitted which suggests professional misconduct;
 - (ad) that”;
 - (iii) the words “the functions” are repealed;
 - (b) in paragraph (b)—
 - (i) before “under” insert “that”;
 - (ii) the words “, the functions” are repealed.
 - (3) In section 15(2) (discretion of Council in special cases as respects application for practising certificate)—
 - (a) in paragraph (d), after the word “under” insert “section 42ZA(4)(b) or”;
 - (b) in paragraph (i)—
 - (i) the words “, after a complaint has been made” are repealed;
 - (ii) in sub-paragraph (i), for the words “relating to his conduct of the business of a client” substitute “the Council are investigating a conduct complaint remitted to them under section 6(a) or 15(5)(a) of the 2007 Act.”;
 - (iii) in sub-paragraph (ii), at the beginning insert “after a complaint has been made”.
 - (4) In section 20(2) (Council’s duty to supply lists of solicitors holding practising certificates), after the words “55(1)(ba)” insert “or (bb)”.

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- (5) In section 25A (rights of audience of solicitors in Court of Session etc.), after subsection (14), insert—
- “(14A) Where the Commission makes a determination under section 9(1) of the 2007 Act upholding a services complaint against a solicitor, the Council may, if they consider that the complaint has a bearing on his fitness to exercise any right of audience held by him by virtue of this section and that it is appropriate to do so, suspend or revoke the right.”.
- (6) In section 34 (rules as to professional practice, conduct and discipline)—
- (a) after subsection (4) insert—
- “(4ZA) If any solicitor fails to comply with any rule made under this section, that failure may be treated as professional misconduct or unsatisfactory professional conduct.”;
- (b) after subsection (4B), insert—
- “(4C) Subsection (4) does not apply to any failure to which subsection (4ZA) applies.
- (4D) Subsection (4ZA) applies to any element of failure which does not involve the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (7) In section 35(3) (failure by solicitor to comply with rule made under section 35 may be treated as professional misconduct for certain purposes), for the words “for the purposes of Part IV” substitute “or as unsatisfactory professional conduct.”.
- (8) In section 37(8) (failure by solicitor to comply with section 37, accountant’s certificates rules etc. may be treated as professional misconduct for certain purposes), for the words “for the purposes of Part IV” substitute “or as unsatisfactory professional conduct.”.
- (9) In section 38 (powers where dishonesty alleged), after subsection (3) insert—
- “(4) This section does not apply to any element of dishonesty other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (10) In section 39 (powers where undue delay alleged), after subsection (2), insert—
- “(3) This section does not apply to any element of undue delay other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (11) In section 39A (powers where excessive fees etc. charged), after subsection (9) insert—
- “(10) The Council shall notify the Commission of any case—
- (a) where any of the following things occur—
- (i) they withdraw a practising certificate under subsection (2);
- (ii) they terminate a suspension from practice and restore a practising certificate under subsection (3);
- (iii) the Court makes an order under subsection (8); and

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- (b) which does not involve a complaint remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act.”.
- (12) In section 40 (powers where failure to comply with accounts rules, etc.), after subsection (4), insert—
 - “(5) The Council shall notify the Commission of any case—
 - (a) where any of the following things occur—
 - (i) they withdraw a practising certificate under subsection (1);
 - (ii) they terminate a suspension from practice and restore a practising certificate under subsection (2);
 - (iii) the Court makes an order under subsection (3); and
 - (b) which does not involve a complaint remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act.”.
- (13) In section 42C (powers to examine documents and demand explanations in connection with complaints)—
 - (a) in subsection (3), for the words “documents specified in section 38(2)” substitute “following documents—
 - (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm or, as the case may be, the incorporated practice;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the solicitor is a sole trustee or is a co-trustee only with one or more of his partners or employees or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or of which the practice is a co-trustee only with one or more of its employees.”;
 - (b) in subsection (4), for the words “section 38” in each place where they occur substitute “sections 38, 45 and 46”;
 - (c) after that subsection, insert—
 - “(5) This section does not apply to any element of professional misconduct other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (14) In section 44(4) (failure to comply with rules made under section may be treated as professional misconduct for certain purposes), for the words from “for” to the end substitute “or unsatisfactory professional conduct.”.
- (15) In section 45 (safeguarding interests of clients of solicitors struck off or suspended)—
 - (a) in subsection (1), after “section”, where it first occurs, insert “(except subsection (4A))”;
 - (b) for subsection (3), substitute—
 - “(3A) If the solicitor or, as the case may be, the incorporated practice fails so to satisfy the Council, the Council may—
 - (a) require the production or delivery to any person appointed by them at a time and place fixed by them of the documents mentioned in subsection (3B);
 - (b) take possession of all such documents; and

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- (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of the solicitor or his firm or, as the case may be, the incorporated practice without the leave of the Court and the Court may make such order.
- (3B) The documents are—
- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm or, as the case may be, the incorporated practice;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the solicitor is a sole trustee or is a co-trustee only with one or more of his partners or employees or, as the case may be, of which the incorporated practice or one of its employees is a sole trustee or of which the practice is a co-trustee only with one or more of its employees.”;
- (c) after subsection (4A) (as inserted by section 60(2)(a) of this Act), insert—
- “(4B) Part II of Schedule 3 has effect in relation to the powers of the Council under subsection (3A).”;
- (d) in subsection (5), the word “and” following the definition of “material date” is repealed.
- (16) In section 46 (safeguarding interests of clients in certain other cases)—
- (a) in each of subsections (2) and (3) for the words from “the provisions of section 38” to the end, substitute—
- “the Council may do any of the things mentioned in subsection (3A)”;
- (b) after subsection (3), insert—
- “(3A) The things are to—
- (a) require the production or delivery to any person appointed by the Council at a time and a place fixed by them of the documents mentioned in subsection (3B);
 - (b) take possession of all such documents; and
 - (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of the solicitor or his firm without the leave of the Court and the Court may make such order.
- (3B) The documents are—
- (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the solicitor or his firm;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which he is a sole trustee or is a co-trustee only with one or more of his employees.”;
- (c) after subsection (4), insert—

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- “(4A) Part II of Schedule 3 has effect in relation to the powers of the Council under subsection (2) or (3).”.
- (17) In section 51 (complaints by Council and public office holders to Tribunal), after subsection (2) insert—
- “(2A) The power in subsection (2) to report to the Tribunal any case where it appears that a solicitor may have been guilty of professional misconduct does not apply to any element of professional misconduct other than that involving the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (18) In section 52 (procedure on certain complaints and appeals to Tribunal)—
- (a) in the section title, after the word “complaints” insert “and appeals”;
- (b) in subsection (1), after the word “complaint” insert “or appeal”;
- (c) in subsection (2)—
- (i) in paragraph (aa), after the words “42A(7)” insert “, 42ZA(9), (10), (11) or (12), 42ZD(1)”;
- (ii) in sub-paragraph (ii) of paragraph (ab), for the words “(11)(b)” substitute “(8A)(b), (11)(b) or (11ZC)”;
- (iii) after that sub-paragraph insert—
- “(iii) appeals under section 20ZB(9), (10), (11) or (12) or 20ZE(1) of that Act;”;
- (d) after that subsection, insert—
- “(3) Rules made by the Tribunal under subsection (2) for regulating the making, hearing or determining of appeals referred to in paragraph (aa) or (ab)(ii) of that subsection may include provision as to persons being entitled, or required by the Tribunal, to appear or be represented at the appeal.”.
- (19) In section 53 (power of Tribunal to fine for professional misconduct etc.)—
- (a) after subsection (3), insert—
- “(3ZA) The Tribunal shall not impose a fine under subsection (2)(c)—
- (a) where the Tribunal is proceeding on the ground referred to in subsection (1)(a) and the solicitor, in relation to the subject matter of the Tribunal’s inquiry, has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years;
- (b) where the Tribunal is proceeding on the ground referred to in subsection (1)(b).”;
- (b) after subsection (7A), insert—
- “(7B) 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.”;
- (c) after subsection (9) (as inserted by section 56(1)(c) of this Act), insert—
- “(10) The powers of the Tribunal under paragraph (bb) of subsection (2), and subsection (3ZA), apply to any element of a decision of the

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Tribunal which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.

- (11) Subsection (3) does not apply to any element of a decision of the Tribunal to which subsection (3ZA) applies.”.
- (20) In section 53D (suspension etc. of investment business certificates: appeal to Tribunal), for subsection (3) substitute—
- “(2A) The solicitor, firm of solicitors or, as the case may be, the incorporated practice may, before the expiry of the period of 21 days beginning with the day on which the decision of the Tribunal under subsection (2) is intimated to him or, as the case may be, it, appeal to the Court against the decision.
- (2B) The Council may, before the expiry of the period of 21 days beginning with the day on which the decision of the Tribunal under subsection (2) is intimated to them, appeal to the Court against the decision.
- (2C) On an appeal under subsection (2A), 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.
- (2D) A decision of the Court under subsection (2C) shall be final.”.
- (21) In section 55 (powers of Court), after subsection (7) (as inserted by section 56(2)(b) of this Act), insert—
- “(8) The power under paragraph (bc) of subsection (1) applies to any element of a decision of the Court which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (22) In section 62A(2) (Council’s power to recover expenses under section 38, 45 or 46), after the words “38” insert “, 45 or 46”.
- (23) In section 65(1) (interpretation)—
- (a) after the definition of “the 1990 Act”, insert—
- ““the 2007 Act” means the [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#);”;
- (b) after the definition of “client account”, insert—
- ““the Commission” means the Scottish Legal Complaints Commission;”.
- (24) In section 65, after subsection (4) insert—
- “(5) In this Act, references to “inadequate professional services” do not include any professional services other than the advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (25) In Schedule 3, Part II (power of Council to investigate), in paragraph 5(1), (2) and (3), after the words “section 38” in each place where they occur insert “, 45 or 46”.
- (26) In Schedule 4 (Constitution, Procedure and Powers of Tribunal)—
- (a) paragraph 8A is repealed;

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- (b) in paragraph 15, for the words “and to the complainer” substitute “, the complainer and, as the case may be, the person who made the complaint as respects which the appeal was made to the Tribunal”;
- (c) in paragraph 23—
 - (i) after first “section”, insert “42ZA(9), (10), (11) or (12), section 42ZD(1),”;
 - (ii) in sub-paragraph (a), after the word “complaint” insert “(except in paragraph 14A)”;
 - (iii) sub-paragraph (b) is repealed;
 - (iv) in sub-paragraph (c), the words “8A” are repealed;
 - (v) after paragraph (c), insert—
 - “(ca) in paragraph 11, for the words “complainer and respondent” there shall be substituted “parties to the appeal”;
 - (cb) in paragraph 12—
 - (i) for the words “the complainer or the respondent” there shall be substituted “any party to the appeal”;
 - (ii) for the word “respondent” where it second appears there shall be substituted “solicitor, the firm of solicitors or, as the case may be, the incorporated practice”;
 - (iii) for the words “complainer and to the respondent” there shall be substituted “parties to the appeal”;
 - (cc) in paragraph 14A(a), after the word “complaint” there shall be inserted “(as respects which the appeal was made)”;
 - (cd) in paragraph 15, for the words “respondent, the complainer and, as the case may be, the person who made the complaint as respects which the appeal was made to the Tribunal” there shall be substituted “parties to the appeal and, if the person who made the complaint as respects which the appeal was made was not a party to the appeal, to that person”;
 - (ce) in paragraph 16, after paragraph (e) there shall be inserted—
 - “(ea) under section 42ZD(2); or
 - (eb) under section 53ZB(1), (2), (3) or (4); or”;
 - (vi) for paragraph (d), there shall be substituted—
 - “(d) in paragraph 19, for the words from the beginning to “respondent” there shall be substituted “The Tribunal may make such order as it thinks fit as to the payment by any party to the appeal”;
- (d) in paragraph 25, for the words from “person” to first “and” substitute “solicitor, the firm of solicitors or, as the case may be, the incorporated practice, to the person who made the complaint in respect of which the appeal was made and, as the case may be,”.