

# **SOLICITORS IN THE SUPREME COURTS OF SCOTLAND (AMENDMENT) ACT 2021**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1: Amendment of the 1871 Act***

8. Subsection (2) inserts a new subsection into section 2 of the 1871 Act expressly stating that the 1871 Act applies in respect of a widower or surviving civil partner as it applies in respect of a widow and in respect of a civil partnership as it applies in respect of a marriage. The reference in the inserted subsection (2) to “necessary modifications” is to take account of such matters as that the pronouns in the existing provisions of the 1871 Act will require to be construed with those applications in mind. In consequence of the wider application of the 1871 Act it is now considered appropriate to change the name of the Widows’ Fund to “the Dependents’ Fund”. That change is provided for in subsections (5)(b), (6), (7), (8) and (11) to (17) of section 1, as well as in section 2, of the Act.
9. Subsection (3) amends the existing definitions of office bearers. This is to take account of changes in Scottish professional life. For example, there are now professional librarians and the statutory discipline powers for solicitors now preclude the SSC Society’s dealing with such persons.
10. Subsection (4) inserts a new subsection into section 11 of the 1871 Act to make allowance for a voting threshold notwithstanding the provisions of new section 52B(5) of that Act.
11. Subsection (5)(a) deletes unnecessary words following on from the changed disciplinary powers of the SSC Society.
12. Subsection (5)(c) amends the 1871 Act by widening the circumstances in which a member may resign from the SSC Society.
13. Subsection (9) introduces a new provision that allows the Council of the SSC Society a pragmatic power to settle any claim for an annuity based on cohabitation.
14. Subsection (10) is needed because there is no longer any relevant legal distinction between legitimate and illegitimate children.
15. Subsection (16) inserts a new section (section 51A) into the 1871 Act.
16. Inserted section 51A(1) allows the Society, by resolution, to close the Dependents’ Fund completely.
17. Inserted section 51A(2) allows the Society, as an alternative to closure under inserted section 51A(1), to close the Dependents’ Fund to members joining after such date as may be specified.

*These notes relate to the Solicitors in the Supreme Courts of Scotland  
(Amendment) Act 2021 (asp 2) which received Royal Assent on 20 January 2021*

18. Subsections (3) and (4) of inserted section 51A require that if there is closure of the Dependants' Fund under inserted section 51A(1) then the financial position of present and future annuitants is protected by the making of such lump sum or other payment as seems reasonable to the Council; and thereafter any residual money in the Dependents' Fund is to be transferred to the Society.
19. Inserted section 51A(5) establishes the conditions that must be fulfilled before either closing the Dependents' Fund completely or closing the fund to new members. An actuarial investigation is required, an appropriate recommendation must be made by the Council, and there requires to be intimation to all members of the Society of a special general meeting to consider the recommendations of the Council.
20. Inserted section 51A(6) requires all annuitants and prospective annuitants to be notified of a recommendation that the Dependents' Fund be closed completely before commencing any proceeding under section 51A(1).
21. Inserted section 51A(7) makes further provision for closing the Dependents' Fund. The fund may be closed to new members on one date and closed completely on a later date; or it may be closed completely without first having been closed to new members.
22. Inserted section 51A(8) provides a saving for the rights of annuitants under section 41 of the 1871 Act.
23. Inserted section 51A(9) provides that powers under section 51A are not affected by other provisions of the 1871 Act.
24. Subsection (17) inserts two new sections (sections 52A and 52B) into the 1871 Act.
25. Subsections (1) and (2) of inserted section 52A state that the Society may make provision for new and various forms of membership that are distinct from full membership and that these include but are not necessarily restricted to corporate membership, trainee solicitor membership and associate membership.
26. Inserted section 52A(3) limits the rights enjoyed by virtue of any of those newer forms of membership.
27. Inserted section 52B(1) allows the Society a power, not available at present, to wind up the Society by resolution and to make arrangements to achieve that object.
28. Inserted section 52B(2) establishes the conditions that must be fulfilled before the Society may be wound up. A special general meeting requires to be convened on 30 days' notice in writing to allow the members to discuss a proposal by the Council to wind up the Society.
29. Inserted section 52B(3) requires consultation before any special general meeting under section 52B(1) is convened.
30. Subsections (4) and (5) of inserted section 52B allow the Society to determine the procedure by which a decision to wind up the Society is to be taken, including provision as to the voting threshold and quorum required.
31. Inserted section 52B(6) makes provision as regards the implementation of a decision made under inserted section 52B(1).