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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE LAW SOCIETY OF SCOTLAND

##### *Constitution and Proceedings*

- 1 The Society shall be a body corporate with a common seal and may sue and be sued in its own name.
- 2 The Council shall prepare a scheme providing for—
  - (a) the constitution<sup>F1</sup>... and proceedings of the Council;
  - [<sup>F2</sup>(aa) election, co-option and appointment to the Council;]
  - (b) the meetings of the Society;
  - (c) the appointment of a chairman, vice-chairman, secretary and other officers and employees of the Society;
  - (d) the appointment and constitution of committees [<sup>F3</sup>and sub-committees].

##### **Textual Amendments**

- F1** Word in Sch. 1 para. 2(a) repealed (30.6.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\), ss. 132\(2\)\(a\)\(i\), 150\(2\)](#); S.S.I. 2011/180, art. 6
- F2** Sch. 1 para. 2(aa) inserted (30.6.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\), ss. 132\(2\)\(a\)\(ii\), 150\(2\)](#); S.S.I. 2011/180, art. 6
- F3** Words in Sch. 1 para. 2(d) inserted (1.6.2003) by [Council of the Law Society of Scotland Act 2003 \(asp 14\), ss. 2\(2\), 3\(2\)](#)

- 3 The scheme prepared under paragraph 2—
  - (a) may make provision enabling the Council to admit as honorary members of the Society persons who have ceased to be practising solicitors, no such honorary member being entitled to vote at meetings of the Society or liable to pay an annual subscription;
  - (b) shall make provision for the admission on application made in that behalf and on payment of the annual subscription as a member of the Society of any solicitor who by virtue of the provisions of section 24 is exempted from taking out a practising certificate;
  - [<sup>F4</sup>(bza) shall make provision for—
    - (i) the election or co-option of solicitor members to the Council,
    - (ii) the appointment of non-solicitor members to the Council;]
    - [<sup>F5</sup>(ba) may make provision for persons other than solicitors to be members of a committee or sub-committee of the Council (including provision for such persons to constitute a majority of the members of the committee or sub-committee);]

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- (c) may contain such other provisions with respect to the administration, management and proceedings of the Society as are considered necessary or proper and are consistent with the provisions of this Act.

**Textual Amendments**

- F4** Sch. 1 para. 3(bza) inserted (30.6.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 132(2)(b)**, 150(2); S.S.I. 2011/180, art. 6
- F5** Sch. 1 para. 3(ba) inserted (1.6.2003) by [Council of the Law Society of Scotland Act 2003 \(asp 14\)](#), **ss. 2(3)**, 3(2)

[<sup>F6</sup>3A (1) This paragraph applies for the purpose of paragraph 3(bza).

- (2) Persons are electable, or eligible to be co-opted, as solicitor members if they are members of the Society.
- (3) Persons are appointable as non-solicitor members if they appear to the Council—
- (a) to be qualified to represent the interests of the public in relation to the provision of legal services in Scotland, or
  - (b) having regard to the Society's functions, to be suitable in other respects.]

**Textual Amendments**

- F6** Sch. 1 para. 3A inserted (30.6.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 132(2)(c)**, 150(2); S.S.I. 2011/180, art. 6

4 A scheme prepared under paragraph 2 shall have effect on being approved by a resolution passed by a majority of the members present in person or by proxy at a general meeting of the Society, or at an adjournment of such meeting.

5 The Society may by a resolution passed by a majority consisting of not less than two-thirds of the members of the Society present in person or by proxy at a meeting of the Society of which due notice specifying the intention to propose the resolution has been given, or at any adjournment of such meeting, rescind, add to or amend any of the provisions of the scheme so approved.

*Revenue*

[<sup>F7</sup>6 Subject to paragraph 7, every member of the Society shall, for each year, pay to the Society such subscription as may be fixed from time to time by the Society in general meeting.]

**Textual Amendments**

- F7** Paras. 6 and 6A substituted for para. 6 by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. II para. 7(a)**

6A The subscription payable under paragraph 6 by a practising member (or the proportion of it so payable, calculated by reference to the number of months remaining in the practice year) shall be paid at the time of submission of his application for a practising certificate.

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- 7 The . . . <sup>F8</sup> subscription payable by a solicitor in respect of the year [<sup>F9</sup>or part thereof] in which he is first included in the roll of solicitors and in respect of each of the two years immediately following shall be one half of the amount of the . . . <sup>F8</sup> subscription fixed under paragraph 6 [<sup>F10</sup>(reduced, in the case of a solicitor first included in the roll for only part of a year, in that year proportionately)].

**Textual Amendments**

- F8** Word repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 7\(b\)](#), Sch. 4
- F9** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 7\(b\)](#)
- F10** Words added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 7\(b\)](#)

- [<sup>F11</sup>7A The Society shall have power, subject to paragraphs 7B to 7D, to impose in respect of any year a special subscription on all members of the Society of such amount and payable at such time and for such specified purposes as it may determine.]

**Textual Amendments**

- F11** [Paras. 7A–7D](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 7\(c\)](#)

- 7B The Society may determine that an imposition under paragraph 7A shall not be payable by any category of member or shall be abated as respects any category of member.
- 7C An imposition under paragraph 7A or a determination under that paragraph or paragraph 7B may be made only in general meeting.
- 7D No imposition may be made under paragraph 7A above unless a majority of those members [<sup>F12</sup>voting] at the general meeting at which it is proposed has, whether by proxy or otherwise, voted in favour of its being made.

**Textual Amendments**

- F12** Word substituted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), [Sch. 1 para. 21](#)

- 8 Except as otherwise provided in this Act, the expenses of the Society shall be defrayed out of the subscriptions and other income received by the Society or the Council and out of other property belonging to the Society.

In this paragraph “expenses of the Society” includes the expenses of the Tribunal so far as not otherwise defrayed and any expenses incurred by the Council in the exercise of their functions under this Act, and the reasonable travelling and maintenance expenses of members of the Council or committees of the Council incurred in attending meetings of the Council or committees, or otherwise incurred in the business of the Society.

- 9 Paragraph 8 does not affect any trust constituted for a special purpose.

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### *Powers*

- 10 The Society may—
- (a) purchase or otherwise acquire land for any of the purposes of this Act;
  - (b) sell, lease or otherwise dispose of land so acquired;
  - (c) borrow for any of the purposes of this Act in such manner and on such security as they may determine;
  - (d) invest any monies not immediately required to meet expenses and other outlays of the Society in any investment in which trustees in Scotland are by law authorised to invest (but nothing in this sub-paragraph prevents the investment of any monies forming any part of any property held in trust for a special purpose in any class of investment authorised by the deed constituting the trust);
  - (e) accept any gift of property for the purposes of the Society;
  - (f) accept, hold and administer any gift of property or hold as trustees any property for any purpose which the Society consider to be for the benefit of solicitors in Scotland or their dependants or employees or any substantial body of such solicitors or dependants or employees; and
  - (g) subject to the provisions of this Act exercise the functions formerly exercised by the General Council of Solicitors in Scotland.
- 11 The Council may—
- (a) act for and in the name of the Society in any matter other than a matter which in accordance with the provisions of this Schedule is to be determined by the Society in general meeting;
  - (b) without prejudice to any other powers they may have, take into consideration and make recommendations or representations with regard to any matters which are in their opinion of importance to solicitors in Scotland

### *[<sup>F13</sup> Exemption from liability for damages*

#### **Textual Amendments**

**F13** Sch. 1 para. 11A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(16)**; S.I. 1991/1252, art. 3, **Sch. 1**

- <sup>F14</sup>11A Neither the Society nor any of its officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of its functions unless the act or omission is shown to have been in bad faith.]

#### **Textual Amendments**

**F14** Sch. 1 para. 11A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(16)**; S.I. 1991/1252, art. 3, **Sch. 1**

### *Attestation*

- <sup>F15</sup>12 .....

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### Textual Amendments

**F15** Sch. 1 para. 12 repealed (1.8.1995) by 1995 c. 7, s. 14(2), Sch.5 (with ss. 9(3)(5)(7), 13, 14(3))

## SCHEDULE 2

Section 11.

### THE ROLL: <sup>F16</sup>POWERS OF THE COUNCIL] AND ANCILLARY PROVISIONS

### Textual Amendments

**F16** Words substituted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), Sch. 1 para. 22(a)

1

<sup>F17</sup> the Council (as registrar of solicitors) for the purpose of maintaining the roll as correctly as is reasonably practicable [<sup>F18</sup>shall have power]—

- (a) to remove from the roll the name of any solicitor who has died;
- (b) to send to any solicitor at his address as shown in the roll a letter enquiring whether he wishes to continue to have his name included in the roll and intimating that if no reply is made within the period of 6 months beginning with the date of the posting of the letter his name may be removed from the roll;
- (c) to send any solicitor on the roll who has for at least 3 years been so enrolled in pursuance of regulations made by the Council under section 5 on an undertaking by him to serve a post qualifying year for practical training which the Council are not satisfied that he has implemented, a letter enquiring whether he intends to fulfil that undertaking and intimating that unless a reply which the Council regard as satisfactory is received within the period of 6 months beginning with the date of the posting of the letter his named may be removed from the roll; and
- (d) if a reply indicating that he does not wish that his name shall continue to be included in the roll is returned by any solicitor to whom a letter has been so sent, or if no reply or in a case of a letter sent under subparagraph (c) a reply which the Council do not regard as satisfactory is returned within the period mentioned in subparagraph (b) or (c), as the case may be, by any such solicitor, to remove the name of that solicitor from the roll.

### Textual Amendments

**F17** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1)(2), Sch. 1 para. 22(a), Sch. 2

**F18** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), Sch. 1 para. 22(a)

2

The Council may, on the application of a solicitor whose name has been removed from the roll in pursuance of paragraph 1(d), and on payment by him to the Council of such reasonable fee in respect of restoration as the Council may fix, order that his name shall be restored to the roll.

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- 3 Any person aggrieved by a decision of the Council under paragraph 2 may appeal against the decision to the Court, and the provisions of section 40(3) shall, subject to any necessary modifications, apply to any such appeal.
- [<sup>F194</sup> Subject to section 7(3), the Council may charge such reasonable fees (including an annual fee payable by enrolled solicitors) as they may fix in connection with the keeping of the roll.]

#### Textual Amendments

**F19** Sch. 2 para. 4 added by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), [Sch. 1 para. 22\(b\)](#)

## SCHEDULE 3

Section 43.

### PART 1

#### THE SCOTTISH SOLICITORS GUARANTEE FUND

##### *Contributions by Solicitors*

- 1 (1) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund by every solicitor in respect of each year during which, or part of which, he is in practice as a solicitor, along with his application for a practising certificate, a contribution (hereafter referred to as an “annual contribution”). . . <sup>F20</sup>
- (2) The sum payable by a solicitor in respect of the year in which he first commences to practise after admission and in respect of each of the 2 years immediately following shall be one half of the annual contribution.
- [<sup>F21</sup>(2A) Sub-paragraphs (1) and (2) do not apply to solicitors who are
- [ directors]<sup>F23</sup>or members] of incorporated practices][<sup>F24</sup> or
- <sup>F22</sup>(a)
- (b) investors in licensed legal services providers.]
- (2B) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund
- [ by every incorporated practice in respect of each year during which, or
- <sup>F25</sup>(a) part of which, it is recognised under section 34(1A) a contribution (hereafter referred to as an “annual corporate contribution”) in accordance with the [<sup>F26</sup>relevant scale of annual corporate] contributions referred to in sub-paragraph (3).][<sup>F27</sup>, and
- (b) by every licensed provider, in respect of each year during which or part of which it operates as such under the licence issued by its approved regulator, a contribution (also an “annual corporate contribution”) in accordance with the relevant scale of annual corporate contributions referred to in sub-paragraph (3).]

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(3) The Council shall not later than [<sup>F28</sup>30 September] in each year fix the amount, if any, of the annual contribution to be paid in respect of the following year [<sup>F29</sup>and the [<sup>F30</sup>scales] of the annual corporate contributions to be so paid<sup>F31</sup>....]

[<sup>F32</sup>(3A) The scales of annual corporate contributions—

- (a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—
  - (i) in the case of incorporated practices, the number of solicitors that they have as directors, members or employees,
  - (ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,
- (b) may otherwise make different provision as between incorporated practices and licensed providers.]

(4) No annual contribution shall be payable by a solicitor [<sup>F29</sup>and no annual corporate contribution by an incorporated practice][<sup>F33</sup>or a licensed provider] so long as the amount of the Guarantee Fund including the value of all investments forming part of the Fund and after providing for all outstanding liabilities, is in the opinion of the Council not less than £250,000 or such other sum as the Council may from time to time determine.

(5) If at any time the Council are of the opinion that the liabilities of the Guarantee Fund render it expedient in order to secure the financial stability of the Fund, the Council may, by resolution of which not less than 10 days' previous notice in writing has been given to each member of the Council impose upon every solicitor a contribution (hereafter referred to as a "special contribution") of the amount specified in the resolution, and [<sup>F34</sup>upon every incorporated practice [<sup>F35</sup>and licensed provider] a contribution (hereafter referred to as a "special corporate contribution") in accordance with a scale of such contributions fixed by the Council as under sub-paragraph (3), and a special or special corporate] contribution shall be payable to the Society in one sum or, if the Council so determine, by instalments on or before such date or dates as may be specified in the resolution.

(6) No special contribution shall be payable by a solicitor in the year in which he first commences to practise after admission nor in either of the 2 years immediately following.

(7) ..... <sup>F36</sup>

(8) No annual contribution and no special contribution shall be payable by any solicitor who is in the employment of another solicitor or of a firm of solicitors [<sup>F29</sup>or of an incorporated practice][<sup>F37</sup>or a licensed provider] and who does not engage in practice as a solicitor on his own account.

(9) Without prejudice to any other method of recovering contributions payable to the Society under this Schedule whether annual or special a practising certificate shall not be issued to a solicitor except on production of evidence of payment of the contributions (if any) due by him to the Fund on or before the issue of the certificate.

(10) In this schedule the expression "year" means the period of 12 months commencing on 1 November or such other day as may be fixed by the Council.

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### Textual Amendments

- F20** Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 8\(a\)](#), Sch. 4
- F21** Sub-paras. (2A) and (2B) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 34\(a\)](#)
- F22** Words in Sch. 3 para. 1(2A) renumbered as Sch. 3 para. 1(2A)(a) (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(a\)\(i\)](#), 150(2); S.S.I. 2011/180, art. 3, Sch.
- F23** Words in Sch. 3 para. 1(2A)(a) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(a\)\(ii\)](#), 150(2); S.S.I. 2011/180, art. 3, Sch.
- F24** Sch. 3 para. 1(2A)(b) and word inserted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(a\)\(iii\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F25** Words in Sch. 3 para. 1(2B) renumbered as Sch. 3 para. 1(2B)(a) (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(b\)\(i\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F26** Words in Sch. 3 para. 1(2B)(a) substituted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(b\)\(ii\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F27** Sch. 3 para. 1(2B)(b) and word inserted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(b\)\(iii\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F28** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 8\(b\)](#)
- F29** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 34\(a\)](#)
- F30** Word in Sch. 3 para. 1(3) substituted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(c\)\(i\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F31** Words in Sch. 3 para. 1(3) repealed (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(c\)\(ii\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F32** Sch. 3 para. 1(3A) inserted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(d\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F33** Words in Sch. 3 para. 1(4) inserted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(e\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F34** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 34\(a\)](#)
- F35** Words in Sch. 3 para. 1(5) inserted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(f\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.
- F36** Para 1(7) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. II para. 8\(c\)](#), Sch. 4
- F37** Words in Sch. 3 para. 1(8) inserted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), [ss. 129\(1\)\(g\)](#), 150(2); S.S.I. 2012/152, art. 2, sch.

### <sup>F38</sup> Contributions by registered European lawyers

### Textual Amendments

- F38** Sch. 3 para. 1A and cross-heading inserted (22.5.2000) by [The European Communities \(Lawyer's Practice\) \(Scotland\) Regulations 2000 \(S.S.I. 2000/121\)](#), regs. 1(1), 37(1), [Sch. 1 para. 1\(13\)](#)

- 1A (1) Subject to the provisions of this paragraph, paragraph (1) above shall apply to registered European lawyers as it applies to solicitors and references to a practising certificate shall include references to a registered European lawyer's registration certificate.



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- (2) Where a registered European lawyer can prove that—
- (a) he is covered by a guarantee provided in accordance with the professional rules of his home State [<sup>F39</sup>or Switzerland, in the case of a Swiss lawyer within the meaning of regulation 7(2) of the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019]; and
  - (b) the guarantee is equivalent in terms of the conditions and the extent of its cover to the Guarantee Fund,
- then to the extent that there is such equivalence that lawyer shall be exempt from the requirements of paragraph (1).
- (3) Where the equivalence under sub paragraph (2) is only partial, the Society may specify the guarantee obligations a registered European lawyer is required to meet to comply with paragraph (1).
- (4) Subparagraphs (2), (6) and (8) of paragraph (1) shall not apply.
- (5) For the purposes of this paragraph the words “home State” have the same meaning as provided for in regulation 2 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000 [<sup>F40</sup>as that regulation has effect by virtue of regulation 6 or 7 of the Services of Lawyers and Lawyer's Practice (EU Exit) (Amendment etc.) (Scotland) Regulations 2019].]

#### Textual Amendments

- F39** Words in sch. 3 para. 1A(2)(a) inserted (31.12.2020) by [The Services of Lawyers and Lawyer's Practice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/127\)](#), reg. 1(1), **sch. para. 1(8)(a)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F40** Words in sch. 3 para. 1A(5) inserted (31.12.2020) by [The Services of Lawyers and Lawyer's Practice \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/127\)](#), reg. 1(1), **sch. para. 1(8)(b)**; 2020 c. 1, **Sch. 5 para. 1(1)**

#### *[<sup>F41</sup>Contributions by registered foreign lawyers*

#### Textual Amendments

- F41** Sch. 3 para. 1B and cross-heading inserted (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 12}

- 1B (1) Subject to the provisions of this paragraph, paragraph 1 above shall apply to registered foreign lawyers as it applies to solicitors and in that paragraph as so applied references to a practising certificate shall be construed as references to a registered foreign lawyer’s registration certificate.
- (2) Where a registered foreign lawyer can prove that—
- (a) he is covered by a guarantee provided in accordance with the rules of the legal profession of which he is a member; and
  - (b) the guarantee is equivalent in terms of the conditions and the extent of its cover to the Guarantee Fund,

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then to the extent that there is such equivalence that lawyer shall be exempt from the requirements of paragraph 1.

- (3) Where the equivalence referred to in sub paragraph (2) is only partial, the Society may specify the guarantee obligations a registered foreign lawyer is required to meet to comply with paragraph 1.
  - (4) The Council may, where it is satisfied that any acts or defaults on the part of a registered foreign lawyer would not result in a grant being made from the Guarantee Fund held under section 43, exempt that lawyer from the requirements of paragraph 1.
  - (5) Sub paragraphs (2), (6) and (8) of paragraph 1 shall not apply to registered foreign lawyers.]
- [<sup>F42</sup>1C (1) Paragraph 1 applies to a conveyancing or executry practitioner as it applies to a solicitor.
- (2) But it does so with the following of its provisions to be disregarded—
    - (a) the reference in sub-paragraph (1) to an application for a practising certificate,
    - (b) sub-paragraphs (2), (2A), (6) and (9).
  - (3) If a conveyancing or executry practitioner fails to pay an annual contribution due by virtue of this paragraph, the Council may suspend (pending payment) the relevant entry in the register maintained by them under section 17(1) or 18(1) of the 1990 Act.
  - (4) For the purposes of section 43 and this paragraph, the references to a conveyancing or executry practitioner (or conveyancing or executry services) are to be construed in accordance with section 23 of the 1990 Act.]

#### Textual Amendments

**F42** Sch. 3 para. 1C inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), ss. **129(2)**, 150(2); [S.S.I. 2011/180](#), art. 3, Sch.

#### *Investment etc.*

- 2 (1) Monies not immediately required to meet sums payable out of the Guarantee Fund may be invested by the Society in any investments in which trustees in Scotland are by law authorised to invest.
- (2) The Society may borrow money for the purposes of the Guarantee Fund in such manner and on such security as they may determine but the total sum due at any time in respect of any such loans shall not exceed [<sup>F43</sup>£1,250,000].
- (3) The accounts of the Guarantee Fund shall be made up annually for the year ending 31 October or on such other day as may be fixed by the Council and shall be audited by an auditor appointed by the Society.
- (4) As soon as the audit is completed the audited accounts and the auditor's report on the accounts shall be submitted to the Council and a copy of the audited accounts and the auditor's report shall be sent to the Lord Advocate and to every solicitor who is contributing to the Fund.

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- (5) All investments and other monies forming part of the Guarantee Fund and the books and accounts relating to that Fund shall be kept separate from the other investments and monies, books and accounts of the Society, and the investments and other monies forming part of the Guarantee Fund shall not be liable for any obligations, debts or liabilities incurred by the Society or the Council in relation to any business of the Society other than the business of the Guarantee Fund, nor shall the investments and other monies of the Society held for the purposes other than those relating to the Guarantee Fund be liable for any obligations, debts or liabilities incurred by the Society or the Council in relation to the Guarantee Fund.

#### Textual Amendments

- F43** Sum in Sch. 3 para. 2(2) substituted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 59, 82** (with s. 77); S.S.I. 2007/497, **art. 2**

#### Modifications etc. (not altering text)

- C1** Sch. 3 para. 2: transfer of functions (19.5.1999) by [S.I. 1999/678](#), **art. 2(1)**, Sch.

### Insurance

- 3 (1) The society may enter into a contract of insurance with any person, body of persons or corporation authorised by law to carry on insurance business for guaranteeing the sufficiency of the Guarantee Fund or for any other purpose in relation to the Fund.
- (2) Any such contract of insurance may be entered into in relation to solicitors [<sup>F44</sup>, incorporated practices and licensed providers] generally or in relation to any solicitor or solicitors [<sup>F45</sup>, incorporated practice or practices or licensed provider or providers] named therein.
- (3) No person other than the Society shall have any right of action against a person, body or corporation with whom any such contract of insurance was entered into or have any right to any monies payable under that contract.

#### Textual Amendments

- F44** Words in Sch. 3 para. 3(2) substituted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 129(3)(a)**, 150(2); S.S.I. 2012/152, **art. 2**, sch.
- F45** Words in Sch. 3 para. 3(2) substituted (2.7.2012) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 129(3)(b)**, 150(2); S.S.I. 2012/152, **art. 2**, sch.

### Grants

- 4 (1) Every application for a grant from the Guarantee Fund shall be in such form as may be prescribed by rules made under this Schedule and shall be accompanied, if so required, by the Council by a statutory declaration and the applicant shall produce to the Council such documents and other evidence as they demand.
- (2) The Council may, as a condition of making a grant out of the Guarantee Fund, require the person to whom the grant is made to assign to the Society at the expense of the Society any rights and remedies competent to him against the solicitor in question,

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his partner or employee [<sup>F46</sup>or the incorporated practice in question or its employee] or any other person in respect of the loss.

(3) A grant from the Guarantee Fund may at the discretion of the Council be paid in one sum or in such instalments as the Council may determine.

[<sup>F47</sup>(3A) The amount of an individual grant from the Guarantee Fund may not exceed £1.25 million.]

(4) The Council may make rules with regard to the procedure to be followed in giving effect to the provisions of this Act relating to the Guarantee Fund, including matters to be prescribed thereunder, and also with respect to any matters incidental, ancillary or supplemental to those provisions or concerning the administration, management or protection of the Guarantee Fund.

#### Textual Amendments

**F46** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 34\(c\)](#)

**F47** [Sch. 3 para. 4\(3A\)](#) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 130(a)**, 150(2); [S.S.I. 2011/180](#), art. 3, sch.

#### Modifications etc. (not altering text)

**C2** [Sch. 3 para. 4\(1\)\(4\)](#) modified (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 14}

[<sup>F485</sup> (1) The Scottish Ministers may by regulations amend the sum specified in paragraph 4(3A).

(2) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).

(3) The power to make regulations under sub-paragraph (1) is exercisable by statutory instrument; but a statutory instrument containing any such regulations 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

**F48** [Sch. 3 para. 5](#) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 130(b)**, 150(2); [S.S.I. 2011/180](#), art. 3, Sch.

## PART II

### *Power of Council to investigate*

5 (1) If under section <sup>F49</sup> . . . [<sup>F50</sup>45 or 46] any person (whether a solicitor or not) having possession or control of any documents mentioned in that section refuses or fails to produce or deliver them immediately on being required by the Council to do so or to cause them to be so produced or delivered, the Council may apply to the Court for an order requiring that person to produce or deliver the documents or to cause them

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to be produced or delivered to the person appointed at the place fixed by the Council within such time as Court may order.

- (2) Upon taking possession of any such documents which have been produced or delivered to the Council, the Council shall serve upon the solicitor [<sup>F51</sup>or incorporated practice] mentioned in section <sup>F49</sup> . . . [<sup>F50</sup>45 or 46], and every such person, a notice giving particulars and the date on which they took possession.
- (3) Every requirement made or notice given under section <sup>F49</sup> . . . [<sup>F50</sup> 45 or 46] or under this Part of this Schedule shall be in writing under the hand of such person as may be appointed by the Council for the purpose and may be served either personally or by registered letter or by letter sent by recorded delivery service addressed to the last known place of business or residence of the person to whom the requirement is made or notice given.
- (4) Within 14 days after service of a notice under sub-paragraph (2) the person upon whom such notice has been served may apply to the Court for an order directing the Council to return such documents to the person from whom they were received by the Council or to such other person as the applicant may request and on the hearing of any such application the Court may make the order applied for or such other order as they think fit.
- (5) If no application is made to the Court under sub-paragraph (4) or if the Court on any such application directs that the documents in question remain in the custody or control of the Council, the Council may make enquiries to ascertain the person to whom they belong and may deal with the documents in accordance with the directions of that person.

#### Textual Amendments

- F49** Words in Sch. 3 para. 5(1)-(3) repealed (1.10.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 195, 210, 211, [Sch. 20 para. 1\(18\)](#), [Sch. 23](#) (with ss. 29, 192, 193); S.I. 2008/1436, [art. 3](#)
- F50** Words in Sch. 3 para. 5(1)-(3) inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(25\)](#) (with s. 77); S.S.I. 2008/311, [art. 2](#)
- F51** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 34\(d\)](#)

#### Modifications etc. (not altering text)

- C3** Sch. 3 para. 5 applied (with modifications) (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 13}

## SCHEDULE 4

Sections 50, 52.

### CONSTITUTION, PROCEDURE AND POWERS OF TRIBUNAL

#### Modifications etc. (not altering text)

- C4** [Sch. 4](#) applied (with modifications) (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 13}

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## PART I

### Constitution

[<sup>F52</sup>1 The Tribunal shall consist of not more than 28 members.]

#### Textual Amendments

**F52** Sch. 4 paras. 1-1D substituted (23.11.2007) for Sch. 4 para. 1 by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **58(2)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**

[<sup>F53</sup>1A The Tribunal shall consist of equal numbers of—

- (a) members (in this Part referred to as “solicitor members”) appointed by the Lord President, who are solicitors recommended by the Council as representatives of the solicitors' profession throughout Scotland; and
- (b) members (in this Part referred to as “non-lawyer members”) appointed by the Lord President after consultation with the Scottish Ministers, who are not—
  - (i) solicitors;
  - (ii) advocates;
  - (iii) conveyancing practitioners or executry practitioners, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (“the 1990 Act”);
  - (iv) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.

#### Textual Amendments

**F53** Sch. 4 paras. 1-1D substituted (23.11.2007) for Sch. 4 para. 1 by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **58(2)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**

1B The validity of any proceedings of the Tribunal is not affected by a vacancy in membership of the Tribunal nor by any defect in the appointment of a member.

#### Textual Amendments

**F53** Sch. 4 paras. 1-1D substituted (23.11.2007) for Sch. 4 para. 1 by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **58(2)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**

1C The Scottish Ministers may by order made by statutory instrument amend paragraph 1 so as to vary the maximum number of members of the Tribunal.

#### Textual Amendments

**F53** Sch. 4 paras. 1-1D substituted (23.11.2007) for Sch. 4 para. 1 by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **58(2)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**

1D A statutory instrument containing an order made under paragraph 1C is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

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#### Textual Amendments

**F53** Sch. 4 paras. 1-1D substituted (23.11.2007) for Sch. 4 para. 1 by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 58(2), 82 (with s. 77); S.S.I. 2007/497, art. 2

- 2 Each member of the Tribunal shall retire from office on the expiry of 5 years from the date of his appointment, but [<sup>F54</sup>in the case—
- (a) of a [<sup>F55</sup>non-lawyer] member, may be re-appointed by the Lord President [<sup>F56</sup>after consultation with the Secretary of State]; and
  - (b) of a solicitor member, may be [<sup>F57</sup>re-appointed by the Lord President] on the recommendation of the Council.]

#### Textual Amendments

**F54** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 24(b)(ii)

**F55** Word in Sch. 4 para. 2(a) substituted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 58(3), 82 (with s. 77); S.S.I. 2007/497, art. 2

**F56** Words in Sch. 4 para. 2(a) inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(b)(i); S.I. 1991/1252, art. 3, Sch.1

**F57** Words in Sch. 4 para. 2(b) substituted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(b)(ii); S.I. 1991/1252, art. 3, Sch.1

- 3 The Lord President may from time to time terminate the appointment of any member of the Tribunal, and may fill any vacancy therein by the appointment of a solicitor recommended by the Council or, as the case may be, [<sup>F58</sup>after consultation with the Secretary of State,] by the appointment of a [<sup>F59</sup>non-lawyer] member.

#### Textual Amendments

**F58** Words in Sch. 4 para. 3 inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(c); S.I. 1991/1252, art. 3, Sch.1

**F59** Word in Sch. 4 para. 3 substituted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 58(4), 82 (with s. 77); S.S.I. 2007/497, art. 2

- 4 The Tribunal may appoint one of their number to be chairman, and may also appoint a clerk, who shall not be a member of the Tribunal, and, subject to the provisions of this Act, may regulate their procedure in such way as they may think fit.

- 5 The Tribunal shall be deemed to be properly constituted if—
- (a) at least 4 members are present, and
  - (b) at least [<sup>F60</sup>2 solicitor members are] present, and
  - [<sup>F61</sup>(c) at least 2 non-lawyer members are present.]
  - (d) <sup>F62</sup> .....

#### Textual Amendments

**F60** Words in Sch. 4 para. 5(b) substituted (23.11.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 58(5)(a), 82 (with s. 77); S.S.I. 2007/497, art. 2

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- F61** Sch. 4 para. 5(c) substituted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 58(5)(b)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**
- F62** Sch. 4 para. 5(d) repealed (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 58(5)(c)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**

- 6 There shall be paid to the [<sup>F63</sup>non-lawyer] members of the Tribunal out of money provided by Parliament such fees and allowances as the Secretary of State may <sup>F64</sup> . . . determine.

#### Textual Amendments

- F63** Word in [Sch. 4 para. 6](#) substituted (23.11.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 58(6)**, 82 (with s. 77); S.S.I. 2007/497, **art. 2**
- F64** Words in [Sch. 4 para. 6](#) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 65**, Pt.IV

## PART II

### PROCEDURE AND POWERS OF TRIBUNAL

#### Modifications etc. (not altering text)

- C5** [Sch. 4 Pt. II](#) (paras. 7–22) applied by [Legal Aid \(Scotland\) Act 1986 \(c. 47, SIF 77:2\)](#), ss. 31(10), 45, **Sch. 4 para. 2**

#### Complaints

- 7 The making of a complaint to the Tribunal or the giving of any information in connection with a complaint shall confer qualified privilege.

#### Modifications etc. (not altering text)

- C6** [Sch. 4 paras. 7-9, 11, 13-15, 18A-22](#) applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**); S.S.I. 2003/384, **art. 2**)

- 8 A complaint made to the Tribunal shall not be withdrawn except with the Tribunal's leave and subject to such conditions with respect to expenses or otherwise as the Tribunal thinks fit.

#### Modifications etc. (not altering text)

- C7** [Sch. 4 paras. 7-9, 11, 13-15, 18A-22](#) applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**); S.S.I. 2003/384, **art. 2**)

- 8A <sup>F65</sup> . . . . .



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#### Textual Amendments

**F65** Sch. 4 para. 8A repealed (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82, [Sch. 5 para. 1\(26\)\(a\)](#) (with s. 77); S.S.I. 2008/311, [art. 2](#)

- 9 Subject to Part IV, the Tribunal may dismiss a complaint against a solicitor <sup>F66</sup>or an incorporated practice]—
- (a) without requiring the solicitor <sup>F66</sup>or the incorporated practice] to answer the allegations made against him <sup>F66</sup>or, as the case may be, it] or without holding any enquiry if—
- (i) they are of the opinion that the complaint discloses no *prima facie* case of professional misconduct on the part of the solicitor <sup>F66</sup>or, of failure on the part of the incorporated practice to comply with any provision of this Act or of rules made under this Act]. . . ; or
- (ii) the complainer fails to comply with any rule made under section 52; or
- (b) without hearing parties if they are of the opinion upon consideration of the complaint and other documents that they disclose no case of professional misconduct on the part of the solicitor <sup>F66</sup>or, of failure on the part of the incorporated practice to comply with any provision of this Act or of rules made under this Act]. . . .

#### Textual Amendments

**F66** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 35\(a\)](#)

#### Modifications etc. (not altering text)

**C8** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. 17, 21(2) (3), [Sch. 4 para. 12\(9\)](#); S.S.I. 2003/384, [art. 2](#))

- 10 The Tribunal shall give notice of the complaint to the solicitor <sup>F67</sup>or incorporated practice] against whom the complaint is made (“the respondent”) and shall enquire into the complaint, giving him <sup>F67</sup>or, as the case may be, it] reasonable opportunity of making his <sup>F67</sup>or, as the case may be, its] defence.

#### Textual Amendments

**F67** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 35\(b\)](#)

- 11 For the purpose of enquiring into the complaint the Tribunal may administer oaths and receive affirmations; and the complainer and respondent shall each be entitled—
- (a) to require the evidence of parties, witnesses and others interested, and
- (b) to call for and recover such evidence and documents, and examine such witnesses, as they think proper, but no person shall be compelled to produce any document which he could not be compelled to produce in an action.

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**Modifications etc. (not altering text)**

- C9** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 12 On a petition by the complainer or the respondent to the Court, or to the sheriff having jurisdiction in any place in which the respondent carries on business, the Court or, as the case may be, the sheriff, on production of copies (certified by the Clerk of the Tribunal) of the complaint and answers, if lodged, together with a statement signed by the clerk specifying the place and date of the hearing of the complaint and certifying that notice to that effect has been given to the complainer and to the respondent, and on being satisfied that it would be proper to compel the giving of evidence by any witness or the production of documents by any haver, may—
- (a) grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Tribunal, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation;
  - (b) grant warrant for the recovery of documents; and
  - (c) appoint commissioners to take the evidence of witnesses, to examine havers, and to receive exhibits and productions.

*Decisions*

- 13 The Tribunal shall set out in their decision—
- (a) in the case of a complaint, the facts proved, and
  - (b) in the case of a conviction, particulars of the conviction and sentence.
- and shall in the case of a complaint add to their decision a note stating the grounds on which the decision has been arrived at.

**Modifications etc. (not altering text)**

- C10** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 14 Every decision on the Tribunal shall be signed by the chairman or other person presiding and [<sup>F68</sup>shall, subject to paragraph 14A, be published in full].

**Textual Amendments**

- F68** Words in Sch. 4 para. 14 substituted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(d)**; S.I. 1991/1252, art. 3, **Sch.1**

**Modifications etc. (not altering text)**

- C11** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

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- [<sup>F69</sup>14A In carrying out their duty under paragraph 14, the Tribunal may refrain from publishing any names, places or other facts the publication of which would, in their opinion, damage, or be likely to damage, the interests of persons other than—
- (a) the solicitor against whom the complaint was made; or
  - (b) his partners; or
  - (c) his or their families,
- but where they so refrain they shall publish their reasons for so doing.]

**Textual Amendments**

**F69** Sch. 4 para. 14A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(e)**; S. I 1991/1252, art. 3, Sch.1

**Modifications etc. (not altering text)**

**C12** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 15 A copy of every decision by the Tribunal certified by the clerk shall be sent forthwith by the clerk to the respondent [<sup>F70</sup>, the complainer and, as the case may be, the person who made the complaint as respects which the appeal was made to the Tribunal] intimating the right of appeal available from that decision under this Act.

**Textual Amendments**

**F70** Words in Sch. 4 para. 15 substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(b)** (with s. 77); S.S.I. 2008/311, **art. 2**

**Modifications etc. (not altering text)**

**C13** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

- 16 In the case of a decision by the Tribunal—
- (a) ordering a solicitor to be struck off the roll; or
  - (b) ordering a solicitor to be suspended from practice; or
  - (c) censuring a solicitor [<sup>F71</sup>or an incorporated practice]; or
  - (d) fining a solicitor [<sup>F71</sup>or an incorporated practice], [<sup>F72</sup>or
  - (e) order that the recognition under section 34(1A) of an incorporated practice be revoked][<sup>F73</sup>; or
  - (f) <sup>F74</sup> .....
  - (g) <sup>F74</sup> .....
  - (h) ordering that an investment business certificate issued to a solicitor, a firm of solicitors or an incorporated practice be—
    - (i) suspended; or
    - (ii) subject to such terms and conditions as they may direct; or
    - (iii) revoked,]

*Changes to legislation: Solicitors (Scotland) Act 1980 is up to date with all changes known to be in force on or before 18 June 2024. 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) View outstanding changes*

on the expiration of the days of appeal [<sup>F75</sup>(if any)] without an appeal being lodged or, where an appeal has been lodged, if and as soon as the appeal is withdrawn or a decision by the Court is given in terms of subparagraphs (a) to [<sup>F76</sup>(h)] or in the case of a decision of the Tribunal under section 53(6) [<sup>F77</sup>or (6B)] which has not been varied or quashed by the Court [<sup>F71</sup>or under section 53(6A) which has not been varied by the court], the clerk of the Tribunal shall immediately send to the Council a copy of the decision of the Tribunal certified by him and a copy of the decision by the Court in any appeal, and the Council shall forthwith give effect to any order as to striking the solicitor off the roll and to any terms and conditions directed by the Tribunal under section 53(5); and in any other case shall cause a note of the effect of the decision to be entered against the name of the solicitor in the roll [<sup>F78</sup>or as revoking the recognition under section 34(1A) of an incorporated practice].

#### Textual Amendments

- F71** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 35(c)**
- F72** Word “or” and para. 16(1)(e) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 35(c)**
- F73** Sch. 4 para. 16(f)–(h) and word “; or” inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)**
- F74** Sch. 4 para. 16(f)(g) repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(19)(b), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F75** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)(ii)**
- F76** “(h)” substituted by virtue of Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)(iii)**
- F77** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 23(d)(iv)**
- F78** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 35(c)**

- 17 The Council shall forthwith intimate any order striking a solicitor off the roll or suspending a solicitor from practice to each sheriff clerk and <sup>F79</sup> . . . , to the Principal Clerk of Session, and shall [<sup>F80</sup> , without prejudice to paragraph 14,] cause a notice of the operative part of the order to be published in the Edinburgh Gazette <sup>F81</sup> [ . . . ]

#### Textual Amendments

- F79** Words in Sch. 4 para. 17 repealed (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(f)(i), **Sch. 9**; S.I. 1991/1252, art. 3, **Sch. 1**
- F80** Words in Sch. 4 para. 17 inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(f)(ii)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F81** Words in Sch. 4 para. 17 repealed (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 29(17)(f)(iii), **Sch. 9**; S.I. 1991/1252, art. 3, **Sch. 1**

- 18 The file of orders under this Act striking solicitors off the roll, suspending solicitors from practice, or restoring persons to the roll shall be open for inspection at the office of the Society at any reasonable hour by any person without payment of any fee.

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[<sup>F82</sup>18A Without prejudice to paragraph 18, the Council shall ensure that a copy of every decision published under paragraph 14 is open for inspection at the office of the Society during office hours by any person without payment of any fee.]

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**Textual Amendments**

**F82** Sch. 4 para. 18A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(17)(g)**; S.I. 1991/1252, art. 3, **Sch.1**

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**Modifications etc. (not altering text)**

**C14** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

*Expenses*

19 Subject to the provisions of Part IV, the Tribunal may make in relation to any complaint against a solicitor such order as it thinks fit as to the payment by the complainer or by the respondent of the expenses incurred by the other party and by the Tribunal or a reasonable contribution towards those expenses.

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**Modifications etc. (not altering text)**

**C15** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

20 On the application of the person in whose favour an order for expenses under paragraph 19 is made and on production of a certificate by the clerk of the Tribunal that the days of appeal against the order have expired without an appeal being lodged or, where such an appeal has been lodged, that the appeal has been dismissed or withdrawn, the Court may grant warrant authorising that person to recover those expenses from the person against whom the order was made.

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**Modifications etc. (not altering text)**

**C16** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

21 Such warrant shall have effect for execution and for all other purposes as if it were an extracted decree of court awarded against the person against whom the order of the Tribunal was made.

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**Modifications etc. (not altering text)**

**C17** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), **Sch. 4 para. 12(9)**; S.S.I. 2003/384, **art. 2**)

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- 22 The expenses of the Tribunal so far as not otherwise defrayed shall be paid by the Society as part of the expenses of the Society.

**Modifications etc. (not altering text)**

**C18** Sch. 4 paras. 7-9, 11, 13-15, 18A-22 applied (with modifications) (15.8.2003) by 1990 c. 49, s. 21B(1) (2) (as inserted by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2) (3), Sch. 4 para. 12(9); S.S.I. 2003/384, art. 2)

*<sup>F83</sup> Appeals*

**Textual Amendments**

**F83** Sch. 4 paras. 23–25 added by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), Sch. 1 para. 23(e)

- 23 The foregoing provisions of Part II of this Schedule shall apply in relation to an appeal to the Tribunal under section [<sup>F84</sup>42ZA(9), (10), (11) or (12), section 42ZD(1)]<sup>F85</sup> . . . or section 53D(1) as they apply in relation to a complaint, but with the following modifications—
- (a) for references to a complaint [<sup>F86</sup>(except in paragraph 14A)] there shall be substituted references to an appeal;
  - (b) <sup>F87</sup> . . . . .
  - (c) paragraphs <sup>F88</sup> . . . 9 and 10 shall not apply;
    - [ in paragraph 11, for the words “complainer and respondent” there shall be substituted “ parties to the appeal ”;
  - (ca) <sup>F89</sup> 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”;
  - [<sup>F90</sup>(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;]

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#### Textual Amendments

- F84** Words in Sch. 4 para. 23 inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(i)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F85** Words in Sch. 4 para. 23 repealed (1.10.2008) by Legal Services Act 2007 (c. 29), ss. 195, 210, 211, Sch. 20 para. 1(19)(c), **Sch. 23** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 3**
- F86** Words in Sch. 4 para. 23(a) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(ii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F87** Sch. 4 para. 23(b) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(iii)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F88** Words in Sch. 4 para. 23(c) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(iv)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F89** Sch. 4 para. 23(ca)-(ce) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(v)** (with s. 77); S.S.I. 2008/311, **art. 2**
- F90** Sch. 4 para. 23(d) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(c)(vi)** (with s. 77); S.S.I. 2008/311, **art. 2**

24 Subject to Part IV, the Tribunal may dismiss an appeal without holding an inquiry if—

- (a) they are of the opinion that the appeal is manifestly ill-founded; or
- (b) the appellant fails to comply with any rule made under section 52.

25 The Tribunal shall give notice of the appeal to the [<sup>F91</sup>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,] to the Council and shall enquire into the matter, giving the appellant and the complainer reasonable opportunity to make representations to the Tribunal.]

#### Textual Amendments

- F91** Words in Sch. 4 para. 25 substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82, **Sch. 5 para. 1(26)(d)** (with s. 77); S.S.I. 2008/311, **art. 2**

[<sup>F92</sup>SCHEDULE 5]

#### Textual Amendments

- F92** Sch. 5 repealed (15.8.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(2), **Sch. 9**; S.I. 1991/1252, art. 4, **Sch.2**

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## SCHEDULE 6

Section 66.

### TRANSITIONAL AND SAVINGS PROVISIONS

#### *General*

1 (1) Insofar as—

any agreement, appointment, operation, authorisation, determination, scheme, instrument, order or regulation made by virtue of an enactment repealed by this Act, or

- (b) any approval, consent, direction or notice given by virtue of such an enactment, or
- (c) any complaint made or investigation begun by virtue of such enactment, or
- (d) any other proceedings begun by virtue of such an enactment, or
- (e) anything done or having effect as if done,

could, if a corresponding enactment in this Act were in force at the relevant time, have been made, given, begun or done by virtue of the corresponding enactment, it shall, if effective immediately before the corresponding enactment comes into force, continue to have effect thereafter as if made, given, begun or done by virtue of that corresponding enactment.

(2) Where—

- (a) there is any reference in this Act (whether expressed or implied) to a thing done or required or authorised to be done, or a thing omitted, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of this Act, then
- (b) that reference shall be construed (subject to its context) as including a reference to the corresponding thing, done or required or authorised to be done, or omitted, or to the corresponding events which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any of the corresponding provisions of the repealed enactments.

2 Where any enactment passed before this Act or any instrument of document refers either expressly or by implication to an enactment repealed by this Act, the reference shall (subject to its context) be construed as or as including a reference to the corresponding provision of this Act.

3 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if its corresponding provision has been in force when the period began to run.

#### *Admission of enrolled law agent*

4 Notwithstanding the repeal by this Act of section 15 of the Solicitors (Scotland) Act 1933, the Court may grant an application to be admitted as a solicitor to any applicant who was on 28th June 1933 entitled to be admitted as an enrolled law agent according to the regulations for admission then in force under the <sup>M1</sup>Law Agents (Scotland) Act 1873.



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**Marginal Citations**

**M1** 1873 c. 63.

*Restriction of grant under Guarantee Fund*

- 5 Notwithstanding the repeal by this Act of section 22(2)(b) of the <sup>M2</sup>Legal Aid and Solicitors (Scotland) Act 1949, no grant shall be made by the Council under section 43 in respect of a loss which in the opinion of the Council arose before 1st November 1951.

**Marginal Citations**

**M2** 1949 c. 63.

*Rights of banks*

- 6 Nothing in section 61(3) shall deprive a bank of any right existing on 1st November 1949.

*Admission to societies*

- 7 Notwithstanding the repeal by this Act of sections 44 and 45 of the <sup>M3</sup>Solicitors (Scotland) Act 1933 any society may—
- (a) admit a solicitor as a member on such conditions as it thinks fit;
  - (b) accept as a qualification for admission an apprenticeship served under the provisions of this Act with a solicitor who is not a member.

**Marginal Citations**

**M3** 1933 c. 21.

*Powers of societies*

- 8 The repeal of Section 35 of the Solicitors (Scotland) Act 1933 is without prejudice to powers of control exercisable by any society over its members, being powers the society were entitled to exercise immediately before 1st March 1934.

In this paragraph and in paragraph 7, “society” means a faculty or society of solicitors in Scotland, incorporated by Royal Charter or otherwise formed in accordance with law, other than the Law Society of Scotland.

*Saving for non-qualified person to conduct certain proceedings*

- 9 Nothing in this Act shall affect any enactment empowering any person, not being a person qualified to act as a solicitor, to conduct, defend or otherwise act in relation to any [<sup>F93</sup>action or proceedings in any court].

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#### Textual Amendments

**F93** Words substituted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 24**

#### Register of Law Agents

- 10 Notwithstanding the repeal by this Act of section 18(1) of the <sup>M4</sup>Solicitors (Scotland) Act 1933, the Council shall continue to keep in their custody the Register of Law Agents kept under the <sup>M5</sup>Law Agents (Scotland) Act 1873 and any relative documents transferred to their custody by virtue of section 18(4) of the <sup>M6</sup>Solicitors (Scotland) Act 1949.

#### Marginal Citations

**M4** 1933 c. 21.  
**M5** 1873 c. 63.  
**M6** 1949 c. 63.

#### Certificate of admission

- 11 Notwithstanding the repeal by this Act of section 14 of the <sup>M7</sup>Solicitors (Scotland) Act 1933, the certificate of admission of a solicitor shall be in writing and signed by a judge of the Court.

#### Marginal Citations

**M7** 1933 c. 21.

## SCHEDULE 7

Section 66.

### REPEALS

#### Modifications etc. (not altering text)

**C20** The text of s. 66(2), Sch. 5 para. 10, Sch. 7 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short title	Extent of repeal
23 & 24 Geo. 5. c. 21.	The Solicitors (Scotland) Act 1933.	The whole Act.
24 & 25 Geo. 5. c. 45.	The Solicitors Act 1934.	The whole Act.

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12 & 13 Geo. 6. c. 63.	The Legal Aid and Solicitors (Scotland) Act 1949.	Part II and Schedules 4 to 7 except section 25(1), (1A), (3), (4), (5).
6 & 7 Eliz. 2. c. 28.	The Solicitors (Scotland) Act 1958.	The whole Act.
1965 c. 29.	The Solicitors (Scotland) Act 1965.	The whole Act.
1976 c. 6.	The Solicitors (Scotland) Act 1976.	The whole Act except section 9.

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**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 32(2)(a) words substituted by [2010 asp 16 s. 118\(2\)\(a\)\(ii\)](#)
- s. 32(2C) words inserted by [2010 asp 16 s. 118\(2\)\(a\)\(iii\)](#)

**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. 12A(2)(ba) inserted by [2010 asp 16 s. 118\(3\)](#)
- s. 32(1)(d) and word inserted by [2010 asp 16 s. 118\(2\)\(a\)\(i\)](#)
- s. 32(2D) inserted by [2010 asp 16 s. 118\(2\)\(a\)\(iv\)](#)
- Sch. 4 para. 1A(b)(iia) inserted by [2010 asp 16 s. 118\(2\)\(b\)](#)