



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART II

#### RIGHT TO PRACTISE AS A SOLICITOR

##### *Qualifications and Training*

#### **4 Qualifications for practising as a solicitor.**

No person shall be qualified to practise as a solicitor unless—

- (a) he has been admitted as a solicitor; and
- (b) his name is on the roll; and
- (c) subject to section 24, he has in force a certificate issued by the Council in accordance with the provisions of this Part authorising him to practise as a solicitor (referred to in this Act as a “practising certificate”).

#### **5 Training regulations.**

(1) The Council may, with the concurrence of the Lord President, make regulations for—

- (a) practical training;
- (b) attendance at a course of legal education;
- (c) the passing of examinations.

(2) Regulations under this section—

- (a) may make such incidental, consequential and supplemental provisions as the Council consider necessary or proper in relation to the matters specified in subsection (1);
- (b) may include provision for the charging by the Council of fees and the application thereof; and
- (c) may make different provision for different circumstances.

*Status: Point in time view as at 01/10/2006.*

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## *Admission*

### 6 Admission as solicitor.

(1) Subject to the provisions of this section, no person shall be admitted as a solicitor in Scotland unless—

- (a) <sup>F1</sup> .....
- (b) he has satisfied the Council. . . <sup>F2</sup>
  - (i) that he has complied with the provisions of any regulations made under section 5 that apply to him, and
  - (ii) that he is a fit and proper person to be a solicitor, and has obtained from the Council a certificate to that effect; and
- (c) he has paid such sum in respect of his admission as has been fixed by the Council with the approval of the Lord President.

[<sup>F3</sup>(2) Where—

- (a) a person has complied with the requirements of subsection (1); but
- (b) the Council have not lodged a petition for his admission as a solicitor within one month of his having so complied,

he may apply by petition to the court for admission as a solicitor; and if he produces the certificate mentioned in paragraph (b) of subsection (1) the court shall make an order admitting him as a solicitor.]

(3) If any person has not obtained from the Council a certificate to the effect mentioned in paragraph (b) of subsection (1) but has otherwise satisfied the requirements of that subsection the Court, on such an application being made by him and on being satisfied after such inquiry as it thinks fit, that—

- (a) he is a fit and proper person to be admitted as a solicitor, and
- (b) he is competent to be a solicitor,

may make an order admitting him as a solicitor.

[<sup>F4</sup>(3A) The Council may petition the court for the admission as a solicitor of an applicant who has complied with the requirements of subsection (1) above; and, where it does so it shall lodge the petition not later than one month after the applicant has first so complied.

(3B) The Court shall, on a petition being made to it under subsection (3A) above, make an order admitting the applicant as a solicitor.]

(4) Any order admitting a person as a solicitor under this section shall include a direction to the Council to enter the name of that person in the roll.

(5) Nothing in this section affects the operation of the <sup>M1</sup>Colonial Solicitors Act 1900 or any Order in Council made under that Act (admission as solicitors in Scotland of solicitors of certain overseas territories)

(6) Every person who has been enrolled as a law agent shall be deemed to be admitted as a solicitor.

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#### Textual Amendments

- F1** [S. 6\(1\)\(a\)](#) repealed (1.10.2006) by The Employment Equality (Age) Regulations (S.I. 2006/1031), reg. 49, {Sch. 9} (with regs. 44-46)
- F2** Words repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2, 36:1), s. 56, Sch. 1 Pt. II para. 2(a), Sch. 4
- F3** [S. 6\(2\)](#) substituted (20.7.1992) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), [s. 37\(1\)](#); S.I. 1992/1599, art.4, [Sch. 2](#)
- F4** [S. 6\(3A\)\(3B\)](#) inserted by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. II para. 2(b)

#### Marginal Citations

- M1** [1900 c. 14 \(63 and 64 Vict\)](#).

### *The Roll*

#### 7 Keeping the roll.

- (1) The Council shall continue to be the registrar of solicitors and shall keep at the office of their secretary a roll of solicitors (in this Act referred to as “the roll”).
- (2) The roll shall consist of the names in alphabetical order of all solicitors entered on it in accordance with section 8.
- (3) Any person may inspect the roll during office hours without payment.
- [<sup>F5</sup>(4) Schedule 2 (powers of Council in relation to roll of solicitors) shall have effect.]

#### Textual Amendments

- F5** [S. 7\(4\)](#) added by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), [Sch. 1 para. 2](#)

#### 8 Entry in the roll.

- (1) On production to the Council of an order under section 6 admitting a person as a solicitor and directing that his name be entered on the roll the Council shall enter the name of that person on the roll.
- (2) Any solicitor whose name is entered on the roll (in this Act referred to as “an enrolled solicitor”) shall, on such enrolment, inform the Council in writing of the address of his place of business, and shall on any change of that address, inform them in writing of his new address.
- (3) The Council shall issue a certificate of enrolment to any enrolled solicitor who applies for it.

#### 9 Removal of name from roll on request.

An enrolled solicitor who wishes his name [<sup>F6</sup>, or any annotation made against his name under section 25A(3),] to be removed from the roll of solicitors may make an application to the Council in that behalf, and the Council shall [<sup>F7</sup>on the solicitor

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satisfying the Council] that he has made adequate arrangements with respect to the business he has then in hand, remove the name of that solicitor [<sup>F8</sup>or, as the case may be, the annotation against his name,] from the roll.

#### Textual Amendments

- F6** Words in s. 9 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(2)(a)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F7** Words substituted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 3**
- F8** Words in s. 9 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(2)(b)**; S.I. 1991/1252, art. 3, **Sch. 1**.

### 10 Restoration of name to roll on request.

(1) A solicitor. . . <sup>F9</sup> whose name has been struck off the roll other than by order of the Court, shall only be entitled to have his name restored to the roll, if on an application in that behalf made by him to the Tribunal and after such inquiry as the Tribunal thinks proper, the Tribunal so orders.

[<sup>F10</sup>(1A) On an application to the Council from a solicitor whose name [<sup>F11</sup>, or any annotation against whose name,] has been removed from the roll under section 9 the Council may, after such inquiry as they think proper, restore the name of that solicitor [<sup>F12</sup>or, as the case may be, the annotation,] to the roll.]

- (2) Rules made by the Tribunal under section 52 may—
- regulate the making, hearing and determining of applications under subsection (1);
  - provide for payment by the applicant to the Council of such fee in respect of restoration to the roll as the rules may specify.

#### Textual Amendments

- F9** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1)(2), Sch. 1 para. 4(a), **Sch. 2**
- F10** S. 10(1A) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 4(b)**
- F11** Words in s. 10(1A) 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(3)(a)**; S.I. 1991/1252, art. 3, **Sch. 1**
- F12** Words in s. 10(1A) 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(3)(b)**; S.I. 1991/1252, art. 3, **Sch. 1**

### 11 Directions by Lord President.

(1) The Lord President may give directions to the Council in relation to the carrying out of their duties in connection with the keeping of the roll and they shall give effect to any such direction.

(2) . . . . . <sup>F13</sup>

#### Textual Amendments

- F13** Ss. 11(2), 12 repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**

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**12** ..... <sup>F14</sup>

**Textual Amendments**

**F14** Ss. 11(2), 12 repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**

*<sup>F15</sup> Register of European lawyers<sup>F15</sup>*

**Textual Amendments**

**F15** Ss. 12A-12D inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(2)**

<sup>F15</sup>**12A Keeping the register**

- (1) The Council shall establish and maintain the register referred to in regulation 15 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000, and shall keep the register at the office of their secretary.
- (2) The register shall consist of the names in alphabetical order of all European lawyers entered on it in accordance with regulation 17 of those regulations.
- (3) Any person may inspect the register during office hours without payment.
- (4) Schedule 2 (powers of Council in relation to roll of solicitors) shall apply to the register as it does to the roll and in its application to the register the words “section 7(3)” in paragraph 4 shall be read as if the words “section 12A” were substituted therefor.

<sup>F16</sup>**12B Information to be provided by registered European lawyers**

- (1) Any registered European lawyer—
  - (a) shall, on registration, inform the Council in writing of the address of his place of business, his home professional title, and the name and address of the competent authority with which he is registered in his home state; and
  - (b) shall thereafter inform the Council of any change to the information required under paragraph (a) above.
- (2) The Council shall issue a registration to any registered European lawyer who applies for it.

**Textual Amendments**

**F16** Ss. 12A-12D inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(2)**

<sup>F17</sup>**12C Removal of name from register on request**

A registered European lawyer who wishes his name, or any annotation made against his name under section 25A(3), to be removed from the register may make an application to the Council in that behalf, and the Council shall, on the registered European lawyer satisfying the Council that he has made adequate arrangements with

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respect to the business he has then in hand, remove the name of that solicitor, or, as the case may be, the annotation against his name, from the register.

#### Textual Amendments

**F17** Ss. 12A-12D inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(2)**

#### **F18** 12D Restoration of name to register on request

- (1) Subject to subsection (2), a registered European lawyer whose name has been removed from the register shall be entitled to have his name restored to the register only if, on an application in that behalf made by him to the Tribunal and after such enquiry as the Tribunal thinks proper, the Tribunal so orders.
- (2) On an application to the Council by a registered European lawyer whose name, or any annotation against whose name, has been removed from the register under section 12C, the Council may, after such inquiry as they think proper, restore the name of the registered European lawyer or, as the case may be, the annotation, to the register.
- (3) Rules made by the Tribunal under section 52 may—
  - (a) regulate the making, hearing and determining of applications under subsection (1);
  - (b) provide for payment by the applicant to the council of such fee in respect of restoration to the register as the rules may specify.]

#### Textual Amendments

**F18** Ss. 12A-12D inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(2)**

### *Practising Certificates*

#### **13 Applications for practising certificates.**

- (1) Subject to this section and sections 14 to 24, the Council may make rules with respect to—
  - (a) applications for practising certificates;
  - (b) the issue of practising certificates;
  - (c) the keeping of a register of applications for and the issue of practising certificates.
- (2) Any person may inspect the register during office hours without payment.
- (3) The making of a false statement by a solicitor in an application for a practising certificate may be treated as professional misconduct by him for the purposes of Part IV, unless he proves the statement was made without intention to deceive.

#### **14 Issue of practising certificate.**

- (1) The Council shall issue to an enrolled solicitor on application being duly made by him, a practising certificate in accordance with rules made by them under section 13.

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- (2) The Council shall not issue a practising certificate to a solicitor while he is suspended from practice.

## 15 Discretion of Council in special cases.

- (1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a practising certificate, notice of his intention to do so; and the Council may in their discretion—
- (a) grant or refuse the application, or
  - (b) decide to issue a certificate to the applicant subject to such conditions as the Council may think fit.
- (2) Subject to subsections (3) and (4), this section shall have effect in any case where a solicitor applies for a practising certificate
- (a) ..... <sup>F19</sup>
  - (b) not having held a practising certificate in force within the period of 12 months following the date of his admission; or
  - (c) when a period of 12 months or more has elapsed since he held a practising certificate in force; or
  - (d) without having paid in full any fine imposed on him under Part IV; or
  - (e) without having paid in full any expenses for which he has been found liable under section 38 or Part IV; or
  - (f) when, having been suspended from practice, the period of suspension has expired; or
  - (g) when, having had his name struck off the roll, his name has been restored to the roll; or
  - (h) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or
  - (i) when, after a complaint has been made—
    - (i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply which would enable the Council to dispose of the matter; or
    - (ii) of delay in the disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so,and in either case has been notified in writing by the Council accordingly <sup>F20</sup>;  
or
  - (j) while any thing required to be done by him by a direction of the Council under section 42A or of the Tribunal under section 53A (including any such direction as confirmed or varied on appeal) remains undone.]
- (3) Where a practising certificate free of conditions is issued by the Council under subsection (1) to a solicitor in relation to whom this section has effect by reason of any such circumstances as are mentioned in paragraphs (b), (c), (f), (g) or (h) of subsection (2), this section shall not thereafter have effect in relation to that solicitor by reason of those circumstances.

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- (4) Where the Council decide to issue a practising certificate subject to conditions, they may, if they think fit, postpone the issue of the certificate pending the hearing and determination of an appeal under section 16.

#### Textual Amendments

- F19** S. 15(2)(a) repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2, 36:1), s. 56, Sch. 1 Pt. II para. 3, Sch. 4
- F20** S. 15(2)(j) and “; or” immediately preceding it inserted by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1), [Sch. 1 para. 5](#)

## 16 Appeals from decisions of Council.

- (1) Where an application for a practising certificate is duly made to the Council otherwise than in a case where
- [<sup>F21</sup>(a)] section 15 has effect and the Council refuse or neglect to issue a practising certificate, the applicant [<sup>F22</sup>;
- (b) the Council refuse to recognise a body corporate as being suitable in terms of section 34(1A)(b), the body corporate]
- may apply to the Court, who may make such order in the matter as it thinks fit.
- (2) Where the Council in exercise of the power conferred on them by section 15, refuse to issue a practising certificate, or issue a practising certificate subject to conditions, the applicant may appeal to the Court against that decision within 14 days of being notified of it.
- (3) On an appeal to the Court under subsection (2) the Court may—
- (a) affirm the decision of the Council, or
- (b) direct the Council to issue a practising certificate to the applicant subject to such conditions if any as the Court may think fit; or
- (c) make such other order as it thinks fit.

#### Textual Amendments

- F21** “(a)” inserted by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 1(a)
- F22** S. 16(1)(b) inserted by Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 1(b)

## 17 Date and expiry of practising certificates.

- (1) Every practising certificate issued in November of any year shall bear the date of 1st November in that year, and every other practising certificate shall bear the date of the day on which it was issued.
- (2) Every practising certificate shall have effect from the date it bears under subsection (1).
- (3) Subject to subsection (4), every practising certificate shall expire on 31st October next after it is issued.



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- (4) On the name of any solicitor being struck off the roll or on a solicitor being suspended from practice as a solicitor, any practising certificate for the time being in force of that solicitor shall cease to have effect, but in the case of suspension, if he ceases to be so suspended during the period for which the practising certificate would otherwise have continued in force, the certificate shall thereupon again have effect.

## 18 Suspension of practising certificates.

(1) If—

(a) in pursuance of the [<sup>F23</sup>Mental Health (Care and Treatment) (Scotland) Act 2003], a solicitor is, by reason of mental disorder, [<sup>F24</sup>detained in hospital]<sup>F25</sup>. . . ;

[<sup>F26</sup>(b) a guardian is appointed to a solicitor under the Adults with Incapacity (Scotland) Act 2000 (asp 4);]

(c) the estate of the solicitor is sequestrated;

(d) a solicitor grants a trust deed for behoof of creditors;

(e) a judicial factor is appointed on the estate of the solicitor under section 41;

any practising certificate for the time being in force of that solicitor shall cease to have effect, and he shall be suspended from practice as a solicitor.

[<sup>F27</sup>(1A) If—

(a) an administration or winding up order, or an appointment of a provisional liquidator, liquidator, receiver or judicial factor has been made in relation to the incorporated practice; or

(b) a resolution has been passed for the voluntary winding-up of an incorporated practice (other than a resolution passed solely for the purpose of reconstruction or amalgamation of the incorporated practice with another incorporated practice),

the recognition under section 34(1A) of the incorporated practice shall be thereby revoked.]

(2) On the occurrence of any of the circumstances mentioned in. . . <sup>F28</sup> subsection (1), the solicitor in question shall intimate those circumstances to the Council in writing immediately.

(3) On the occurrence of the circumstances mentioned in paragraphs (d) or (e) of subsection (1) the trustee or as the case may be the judicial factor shall intimate his appointment to the Council in writing immediately.

[<sup>F29</sup>(3A) On the occurrence of the circumstances mentioned in—

(a) paragraph (a) of subsection (1A), the administrator, provisional liquidator, liquidator, receiver or, as the case may be, judicial factor appointed in relation to the incorporated practice;

(b) paragraph (b) of subsection (1A), the incorporated practice shall immediately intimate that fact to the Council.]

### Textual Amendments

**F23** Words in s. 18(1)(a) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), art. 2, {Sch. 1 para. 9(2)(a)}

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- F24** Words in s. 18(1)(a) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), art. 2, {Sch. 1 para. 9(2)(b)}
- F25** Words in s. 18(1)(a) repealed (1.4.2002) by 2000 asp 4, s. 88(2)(3), Sch. 5 para. 15(a), **Sch. 6**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F26** S. 18(1)(b) substituted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 15(b)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F27** S. 18(1A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 2(a)**
- F28** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**
- F29** S. 18(3A) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 2(b)**

**19 Further provisions relating to suspension of practising certificates.**

- (1) The provisions of this section have effect in relation to a practising certificate which has ceased to have effect by virtue of section 18 during the period when that certificate would, but for that section, have continued in force.
- (2) ..... **F30**
- (4) A practising certificate which has ceased to have effect by virtue of paragraphs (c) or (d) of section 18(1) shall again have effect on the solicitor being granted his discharge.
- (5) A practising certificate which has ceased to have effect by virtue of paragraph (e) of section 18(1) shall again have effect on the judicial factor being granted his discharge.
- [<sup>F31</sup>(5A) Where a solicitor is suspended from practice as a solicitor by virtue of paragraph (a) or (b) of section 18(1), the period of suspension shall, for the purposes of section 15(2)(f), expire on the solicitor ceasing to be [<sup>F32</sup>detained in hospital] or subject to guardianship or, as the case may be, on the *curator bonis* being discharged.]
- (6) Where a solicitor is suspended from practice as a solicitor by virtue of paragraphs (c), (d) or (e) of section 18(1), he may at any time apply to the Council to terminate the suspension.
- (7) On an application under subsection (6), the Council may either—
  - (a) grant the application with or without conditions; or
  - (b) refuse the application
- (8) If on an application by a solicitor under subsection (6), the Council refuse the application or grant it subject to conditions, the solicitor may appeal against the decision to the Court, who may—
  - (a) affirm the decision; or
  - (b) vary any conditions imposed by the Council; or
  - (c) terminate the suspension either with or without conditions.

**Textual Amendments**

- F30** S. 19(2)(3) repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**
- F31** S. 19(5A) inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 6**
- F32** Words in s. 19(5A) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), art. 2, {Sch. 1 para. 9(3)}

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## 20 Council’s duty to supply lists of solicitors holding practising certificates.

- (1) The Council shall send a list of all solicitors holding practising certificates for the practice year then current—
- (a) to the Keeper of the Registers of Scotland; <sup>F33</sup> . . .
  - <sup>F34</sup>(ab) to the Principal Clerk of Session;
  - (b) to each sheriff clerk;
- as soon as practicable after 1st December in each year.
- <sup>F35</sup>(2) The Council shall send a list of all solicitors who have rights of audience in—
- (a) the Court of Session, to—
    - (i) the Principal Clerk of Session;
    - (ii) the Principal Clerk of the Judicial Office of the House of Lords; and
    - (iii) the Registrar to the Judicial Committee of the Privy Council;and
  - (b) the High Court of Justiciary, to the Principal Clerk of Justiciary,
- as soon as practicable after 1st December in each year; and where, by virtue of an order under section 53(2)(ba), 53A(2)(ba) or 55(1)(ba), a solicitor’s right of audience in any of those courts is suspended or revoked, the Council shall forthwith inform the persons mentioned in this subsection of that fact.]
- (3) The Council shall notify those persons to whom they have sent lists under this section of any changes in those lists.

### Textual Amendments

- F33** Word in s. 20(1)(a) repealed (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 9**; S.I. 1991/1252, art. 3, **Sch. 1**
- F34** S. 20(1)(ab) 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(4)(a)**; S.I. 1991/1252, art. 3, **Sch.1**
- F35** S. 20(2) 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(4)(b)**; S.I. 1991/1252, art. 3, **Sch.1**

## 21 Consultants to hold practising certificates.

- (1) A consultant shall be treated for the purposes of this Act as a practising solicitor and the provisions relating to practising certificates and, subject to subsection (2), the Guarantee Fund shall apply to him.
- (2) The Council may if they think fit exempt a consultant from any of the provisions of section 43 or Schedule 3 (the Guarantee Fund).
- (3) In this section “consultant” means any solicitor who
- <sup>F36</sup>(a) not being in partnership with a solicitor or other solicitors causes or permits his name to be associated with the name of that solicitor or those solicitors or their firm’s name,
  - <sup>F37</sup>(b) not being a director of an incorporated practice, causes or permits his name to be associated with that incorporated practice,]
- whether he is described as a consultant or adviser or in any other way.

*Status: Point in time view as at 01/10/2006.*

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#### Textual Amendments

- F36** “(a)” inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 3\(a\)](#)
- F37** [S. 21\(3\)\(b\)](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 3\(b\)](#)

## 22 Evidence as to holding of practising certificates.

- (1) Any list purporting to be issued by the Council and to contain the names of solicitors in Scotland who have before 1st December in any year obtained practising certificates for the period of 12 months from 1st November in that year shall, until the contrary is proved, be evidence that the persons named in that list are solicitors holding such certificates.
- (2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as a solicitor under a certificate for the current year, but in the case of any such person an extract from the roll certified as correct by the Council shall be evidence of the facts appearing in the extract.

## 23 Offence to practise without practising certificate.

- (1) Any person who practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence under this Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.
- (2) Without prejudice to any proceedings under subsection (1), failure on the part of a solicitor in practice to have in force a practising certificate may be treated as professional misconduct for the purposes of Part IV.

### [<sup>F38</sup>23A Professional misconduct for registered European lawyer to practise without a registration certificate

Failure on the part of a registered European lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.]

#### Textual Amendments

- F38** [S. 23A](#) inserted (22.5.2000) by [S.S.I. 2000/121](#), regs. 1(1), 37(1), [Sch. 1 para. 1\(4\)](#)

### [<sup>F39</sup>23B

Failure on the part of a registered foreign lawyer in practice to have in force a current registration certificate may be treated as professional misconduct for the purposes of Part IV.]

*Status: Point in time view as at 01/10/2006.*

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#### Textual Amendments

**F39** S. 23B inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 3}

## 24 Saving of public officials.

Nothing in this Act shall require a practising certificate to be taken out by a person who is by law authorised to act as a solicitor to a public department without admission, or by any assistant or officer appointed to act under the direction of any such solicitor.

*[<sup>F40</sup>Registration certificates for registered European Lawyers*

#### Textual Amendments

**F40** Cross-heading and ss. 24A - 24G and inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

### <sup>F41</sup>24A Applications for registration certificates

- (1) Subject to sections 24B to 24G below, the Council may make rules with respect to—
  - (a) applications for;
  - (b) the issue of;
  - (c) the keeping of a register for and the issue of,registration certificates for registered European lawyers as it would make rules under section 13 with respect to practising certificates for enrolled solicitors.
- (2) Any person may inspect the register referred to in subsection (1)(c) during office hours without payment.
- (3) The making of a false statement by a registered European lawyer in an application for a registration certificate may be treated as professional misconduct by him for the purposes of Part IV, unless he proves the statement was made without intention to deceive.

#### Textual Amendments

**F41** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

### <sup>F42</sup>24B Issue of registration certificates

- (1) The Council shall issue to a registered European lawyer on application being made by him, a registration certificate in accordance with rules made by them under section 24A.
- (2) The Council shall not issue a registration certificate to a registered European lawyer while his registration is suspended or withdrawn.

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### Textual Amendments

**F42** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

### <sup>F43</sup>24C Discretion of Council in special cases

- (1) In any case where this section has effect, the applicant shall, unless the Council otherwise order, give to the Council, not less than 6 weeks before he applies for a renewal of a registration certificate, notice of his intention to do so; and the Council may in their discretion—
  - (a) grant or refuse the application; or
  - (b) decide to issue a registration certificate to the applicant subject to such conditions as the Council may think fit.
- (2) Subject to subsections (3) and (4) below, this section shall have effect in any case where a registered European lawyer applies for a renewal of a registration certificate—
  - (a) not having held a registration certificate in force within the period of 12 months following the date of his registration; or
  - (b) when a period of 12 months or more has elapsed since he held a registration certificate in force; or
  - (c) without having paid in full any fine imposed on him under Part IV; or
  - (d) without having paid in full any expenses for which he has been found liable under section 38 or Part IV; or
  - (e) when, having been suspended from practice, the period of suspension has expired; or
  - (f) when, having had his registration withdrawn, he has been registered again; or
  - (g) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or
  - (h) when, after a complaint has been made—
    - (i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply which would enable the Council to dispose of the matter; or
    - (ii) of delay in disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so, and in either case has been notified in writing by the Council accordingly; or
  - (i) while any thing required to be done by him by a direction of the Council under section 42A or of the Tribunal under section 53A (including any such direction as confirmed or varied on appeal) remains undone.
- (3) Where a registration certificate free of conditions is issued by the Council under subsection (1) to a registered European lawyer to whom that subsection has effect by reason of any such circumstances as are mentioned in paragraphs (a), (b), (e), (f) or (g) of subsection (2), this section shall not thereafter have effect in relation to that registered European lawyer by reason of those circumstances.
- (4) Where the Council decide to issue a registration certificate subject to conditions, they may, if they think fit, postpone the issue of the registration certificate pending the hearing and determination of an appeal under section 24D.

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#### Textual Amendments

**F43** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

### <sup>F44</sup>**24D Appeals from decisions of Council**

- (1) Where—
  - (a) an application for a registration certificate is duly made to the Council otherwise than in a case where section 24C has effect and the Council refuse or neglect to issue a registration certificate, the applicant;
  - (b) the Council refuse to recognise a body corporate as being suitable in terms of section 34(1A) (b), the body corporate,may apply to the court, who may make such order in the matter as it thinks fit.
- (2) Where the Council in exercise of the power conferred on them by section 24C, refuse to issue a registration certificate, or issue a registration certificate subject to conditions, the applicant may appeal to the court against that decision within 14 days of being notified of it.
- (3) On an appeal to the court under subsection (2) the court may—
  - (a) affirm the decision of the Council; or
  - (b) direct the Council to issue a registration certificate to the applicant subject to such conditions if any as the court thinks fit; or
  - (c) make such order as it thinks fit.

#### Textual Amendments

**F44** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

### <sup>F45</sup>**24E Date and expiry of registration certificate**

- (1) Every registration certificate issued in November of any year shall bear the date of 1st November in that year, and every other registration certificate shall bear the date on which it was issued.
- (2) Every registration certificate shall have effect from the date it bears under subsection (1).
- (3) Subject to subsection (4), every registration certificate shall expire on 31st October next after it is issued.
- (4) On the name of a registered European lawyer being withdrawn from the register or on a registered European lawyer being suspended from practice as a registered European lawyer, any registration certificate for the time being in force of that registered European lawyer shall cease to have effect, but in the case of suspension, if he ceases to be so suspended during the period for which the registration would otherwise have continued in force, the registration certificate shall thereupon again have effect.]



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#### Textual Amendments

**F45** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

#### <sup>F46</sup>**24F Suspension of registration certificate**

(1) If–

- (a) in pursuance of the [<sup>F47</sup>Mental Health (Care and Treatment) (Scotland) Act 2003] a registered European lawyer is, by reason of mental disorder, [<sup>F48</sup>detained in hospital];
- (b) *acurator bonis* is appointed on the estate of a registered European lawyer;
- (c) the estate of a registered European lawyer is sequestrated;
- (d) a registered European lawyer grants a trust deed for behoof of creditors;
- (e) a judicial factor is appointed on the estate of a registered European lawyer;

any registration certificate for the time being in force of that registered European lawyer shall cease to have effect, and he shall be suspended from practice as a registered European lawyer.

- (2) On the occurrence of any of the circumstances mentioned in subsection (1), the registered European lawyer in question shall intimate those circumstances to the Council in writing immediately.
- (3) On the occurrence of the circumstances mentioned in paragraph (d) or (e) of subsection (1) the trustee or as the case may be the judicial factor shall intimate his appointment to the Council in writing immediately.

#### Textual Amendments

**F46** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(3)**

**F47** Words in s. 24F(1)(a) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), art. 2, {Sch. 1 para. 9(4)(a)}

**F48** Words in s. 24F(1)(a) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), art. 2, {Sch. 1 para. 9(4)(b)}

#### <sup>F49</sup>**24G Further provisions relating to suspension of registration certificate**

- (1) The provisions of this section shall have effect in relation to a registration certificate which has ceased to have effect by virtue of section 24F during the period when that registration certificate would, but for that section, have continued in force.
- (2) A registration certificate which has ceased to have effect by virtue of paragraph (c) or (d) of section 24F(1) shall again have effect on the registered European lawyer being granted his discharge.
- (3) A registration certificate which has ceased to have effect by virtue of paragraph (e) of section 24F(1) shall again have effect on the judicial factor being granted his discharge.
- (4) Where a registered European lawyer is suspended from practice as a registered European lawyer by virtue of paragraph (a) or (b) of section 24F(1), the period of suspension shall, for the purposes of section 24C(2)(e), expire on the registered



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European lawyer ceasing to be <sup>F50</sup>detained] or, as the case may be, on the *curator bonis* being discharged.

- (5) Where a registered European lawyer is suspended from practice as a registered European lawyer by virtue of paragraph (c), (d) or (e) of section 24F(1), he may at any time apply to the Council to terminate the suspension.
- (6) On an application under subsection (5), the Council may either—
  - (a) grant the application with or without conditions; or
  - (b) refuse the application.
- (7) If on an application by a registered European lawyer under subsection (5) the Council refuse the application or grant it subject to conditions, the registered European lawyer may appeal against the decision to the court, who may—
  - (a) affirm the decision; or
  - (b) vary any conditions imposed by the Council; or
  - (c) terminate the suspension either with or without conditions.

#### Textual Amendments

**F49** Ss. 24A-24G inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), Sch. 1 para. 1(3)

**F50** Words in s. 24G substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), art. 2, {Sch. 1 para. 9(5)}

### *Rights of Solicitors*

#### **25 Rights of practising.**

Every person qualified to practise as a solicitor in accordance with section 4 may practise as a solicitor in any court in Scotland.

#### **<sup>F51</sup>25A Rights of audience in the Court of Session, the House of Lords, the Judicial Committee of the Privy Council and the High Court of Justiciary.**

- (1) <sup>F52</sup>Subject to regulations 6 and 11 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 and]without prejudice to <sup>F53</sup>section 103(8) of the Criminal Procedure (Scotland) Act 1995 (right of solicitor to appear before single judge)] and section 48(2)(b) (extension of rights of audience by act of sederunt) of the Court of Session Act 1988, a solicitor who—
  - (a) seeks a right of audience in, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council or, on the other hand, the High Court of Justiciary <sup>F54</sup>and the Judicial Committee of the Privy Council]; and
  - (b) has satisfied the Council as to the requirements provided for in this section, shall have a right of audience in those courts or, as the case may be, that court.
- (2) The requirements mentioned in subsection (1), in relation to the courts or, as the case may be, the court in which a solicitor seeks a right of audience, are that—
  - (a) he has completed, to the satisfaction of the Council, a course of training in evidence and pleading in relation to proceedings in those courts or that court;
  - (b) he has such knowledge as appears to the Council to be appropriate of—

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- (i) the practice and procedure of; and
  - (ii) professional conduct in regard to, those courts or that court; and
  - (c) he has satisfied the Council that he is, having regard among other things to his experience in appropriate proceedings in the sheriff court, otherwise a fit and proper person to have a right of audience in those courts or that court.
- (3) Where a solicitor has satisfied the Council as to the requirements of subsection (2) in relation to the courts or, as the case may be, the court in which he seeks a right of audience the Council shall make an appropriate annotation on the roll against his name.
- (4) The Council shall make rules under this section as to—
- (a) the matters to be included in, the methods of instruction to be employed in, and the qualifications of the person who will conduct, any course of training such as is mentioned in subsection (2)(a); and
  - (b) the manner in which a solicitor’s knowledge of the practice and procedure and professional conduct mentioned in subsection (2)(b) is to be demonstrated, and separate rules shall be so made in relation to, on the one hand, the Court of Session, the House of Lords and the Judicial Committee of the Privy Council and, on the other hand, the High Court of Justiciary [<sup>F54</sup>and the Judicial Committee of the Privy Council].
- (5) The Council shall make rules of conduct in relation to the exercising of any right of audience held by virtue of this section.
- (6) Where a solicitor having a right of audience in any of the courts mentioned in subsection (1) is instructed to appear in that court, those instructions shall take precedence before any of his other professional obligations, and the Council shall make rules—
- (a) stating the order of precedence of those courts for the purposes of this subsection;
  - (b) stating general criteria to which solicitors should have regard in determining whether to accept instructions in particular circumstances; and
  - (c) securing, through such of their officers as they think appropriate, that, where reasonably practicable, any person wishing to be represented before any of those courts by a solicitor holding an appropriate right of audience is so represented,
- and for the purposes of rules made under this subsection the Inner and Outer Houses of the Court of Session, and the High Court of Justiciary exercising its appellate Jurisdiction, may be treated as separate courts.
- (7) Subsection (6) does not apply to an employed solicitor whose contract of employment prevents him from acting for persons other than his employer.
- (8) Subject to subsections (9) and (10), the provisions of section 34(2) and (3) apply to rules made under this section as they apply to rules made under that section and, in considering any rules made by the Council under subsection (5), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights of audience by all practitioners appearing before the Court of Session and the High Court of Justiciary.
- (9) The Council shall, after any rules made under subsection (4) have been approved by the Lord President, submit such rules to the Secretary of State, and no such rules shall

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- have effect unless the Secretary of State, after consulting the Director in accordance with section 64A, has approved them.
- (10) The Council shall, after any rules made under subsection (5) have been approved by the Lord President, submit such rules to the Secretary of State.
- (11) Where the Secretary of State considers that any rule submitted to him under subsection (10) would directly or indirectly inhibit the freedom of a solicitor to appear in court or undertake all the work preparatory thereto he shall consult the Director in accordance with section 64A.
- (12) The Council may bring into force the rules submitted by them to the Secretary of State under subsection (10) with the exception of any such rule which he has, in accordance with section 64B, refused to approve.
- (13) Nothing in this section affects the power of any court in relation to any proceedings—
- (a) to hear a person who would not otherwise have a right of audience before the court in relation to those proceedings; or
  - (b) to refuse to hear a person (for reasons which apply to him as an individual) who would otherwise have a right of audience before the court in relation to those proceedings, and where a court so refuses it shall give its reasons for that decision.
- (14) Where a complaint has been made that a solicitor has been guilty of professional misconduct in the exercise of any right of audience held by him by virtue of this section, the Council may, or if so requested by the Lord President shall, suspend him from exercising that right pending determination of that complaint under Part IV.
- (15) Where a function is conferred on any person or body by this section he or, as the case may be, they shall exercise that function as soon as is reasonably practicable.]

#### Textual Amendments

- F51** S. 25A inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 24; S.I. 1991/1252, art. 3, Sch. 1
- F52** Words in s. 25A inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), Sch. 1 para. 1(5)
- F53** Words in s. 25A(1) substituted (1.4.1996) by 1995 c. 40, s. 5, Sch. 4 para. 31
- F54** Words in s. 25A(1)(a)(4) inserted (20.5.1999) by S.I. 1999/1042, arts. 1(2)(b), 4, Sch. 2 Pt. 1 para. 7(2)

#### *Restriction on rights of practising*

### 26 Offence for solicitors to act as agents for unqualified persons.

- (1) Any solicitor to whom this subsection applies who [<sup>F55</sup>or incorporated practice which] upon the account or for the profit of any unqualified person—
- (a) acts as agent in any action or proceedings in any court, or
  - (b) permits or suffers his [<sup>F55</sup>or, as the case may be, its] name to be made use of in any way in any such action or proceedings; or
  - (c) [<sup>F56</sup>subject to subsection (4),] draws or prepares any writ to which section 32 applies, or

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- (d) [<sup>F57</sup>subject to subsection (4),] permits or suffers his [<sup>F55</sup>or, as the case may be, its] name to be made use of in the drawing or preparing of any such writ; or
- (e) does any other act to enable that person to appear, act or practise in any respect as a solicitor or notary public,

knowing that person not to be a qualified solicitor or notary public, as the case may be, shall be guilty of an offence.

- (2) Subsection (1) applies to any solicitor [<sup>F58</sup>, registered foreign lawyer][<sup>F59</sup>or registered European lawyer pursuing professional activities within the meaning of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000], not being a solicitor [<sup>F58</sup>, registered foreign lawyer][<sup>F59</sup>or registered European lawyer pursuing professional activities within the meaning of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000]who is employed full-time on a fixed salary by a body corporate [<sup>F60</sup>or employed by a law centre.]
- (3) In this section “person” includes a body corporate [<sup>F61</sup>but “unqualified person” does not include an incorporated practice][<sup>F62</sup>, registered foreign lawyer, multi national practice][<sup>F63</sup>or a registered European lawyer pursuing professional activities within the meaning of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000].

[<sup>F64</sup>(4) Subsection (1)(c) and (d) shall not apply in relation to—

- (a) writs relating to heritable or moveable property drawn or prepared upon the account of or for the profit of independent qualified conveyancers providing conveyancing services within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990; or
- (b) papers to found or oppose an application for a grant of confirmation in favour of executors drawn or prepared upon the account of or for the profit of an executry practitioner or recognised financial institution providing executry services within the meaning of the said section 23.]

#### Textual Amendments

- F55** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 4(a)**
- F56** Words inserted in s. 26(1)(a) (1.3.1997 for all purposes except in relation to a recognised financial institution) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(5)(a)**; S.I. 1966/2894, art. 3, **Sch.** as amended by S.I. 1996/2966, **art. 2**
- F57** Words inserted in s. 26(1)(d) (1.3.1997 for all purposes except in relation to a recognised financial institution) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(5)(b)**; S.I. 1996/2894, art. 3, **Sch.** as amended by S.I. 1996/2966, **art. 2**
- F58** Words in s. 26(2) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 4}
- F59** Words in s. 26(2) inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(6)(a)**
- F60** Words inserted in s.26(2) (17.3.1993) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(5)(c)**; S.I. 1993/641, art. 3, **Sch.**
- F61** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 4(b)**
- F62** Words in s. 26(3) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 4}
- F63** Words in s. 26(3) inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(6)(b)**

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**F64** S. 26(4) inserted (1.3.1997 for all purposes except in relation to a recognised financial institution) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(5)(d)**; S.I. 1996/2894, art. 3, **Sch.** as amended by S.I. 1996/2966, **art. 2**

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

**C1** S. 26 amended (17.5.2004) by S.I. 1978/1910, art. 18(2), **Sch. Pt. 3** (as amended by The European Communities (Services of Lawyers) Amendment (Scotland) Order (S.S.I. 2004/186), {art. 7(c)})

**F65**<sup>27</sup> .....

**Textual Amendments**

**F65** S. 27 repealed (17.3.1993) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 9**; S.I. 1993/641, **art. 3**, Sch.

**28 Offence for solicitors who are disqualified to seek employment without informing employer.**

Any person who—

- (a) has been struck off the roll; or
- (b) suspended from practice as a solicitor [<sup>F66</sup>; or
- (c) has had his registration as a registered European lawyer withdrawn; or
- (d) has been suspended from practice as a registered European lawyer][<sup>F67</sup>; or
- (e) has had his registration as a registered foreign lawyer withdrawn; or
- (f) has been suspended from practice as a registered foreign lawyer,]

and while so disqualified from practice seeks or accepts employment by a solicitor in connection with that solicitors practice [<sup>F68</sup>or by an incorporated practice][<sup>F69</sup>or multi-national practice] without previously informing him [<sup>F70</sup>or, as the case may be, it] that he is so disqualified, shall be guilty of an offence.

**Textual Amendments**

**F66** S. 28(c)(d) and the preceding word “or” inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(7)**

**F67** S. 28(e)(f) and preceding word inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 5}

**F68** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 6(a)**

**F69** Words in s. 28 inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 5}

**F70** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 6(b)**

**F71**<sup>29</sup> .....

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#### Textual Amendments

- F71** S. 29 repealed (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 c. 40, ss. 39, 74(2), Sch. 9; S.I. 1991/2151, art. 3, Sch.

### 30 Liability for fees of other solicitor.

Where a solicitor [<sup>F72</sup>or an incorporated practice], authorised by and acting for a client employs another solicitor [<sup>F73</sup>or incorporated practice] he [<sup>F74</sup>or, as the case may be, it] shall (whether or not he [<sup>F74</sup>or, as the case may be, it] discloses the client) be liable to the other solicitor [<sup>F73</sup>or incorporated practice] for that other solicitor's [<sup>F75</sup>or incorporated practice's] fees and outlays, unless at the time of the employment he [<sup>F74</sup>or, as the case may be, it] expressly disclaims any such liability.

#### Textual Amendments

- F72** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 7(a)
- F73** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 7(b)
- F74** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 7(c)
- F75** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, Sch. 1 Pt. I para. 7(d)

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

- C2** S. 30 applied (with modifications) (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.I. 2004/383), {reg. 13}

#### *Unqualified persons acting as solicitors*

### 31 Offence for unqualified persons to pretend to be solicitor or notary public.

[<sup>F76</sup>(1)] Any [<sup>F77</sup> . . . person (including a body corporate) who [<sup>F78</sup>, not having the relevant qualification,] either by himself or together with others, wilfully and falsely—

- (a) pretends to be a solicitor or notary public; or
- [<sup>F79</sup>(aa) pretends to be a registered European lawyer; or]
- [<sup>F80</sup>(ab) pretends to be a registered foreign lawyer; or]
- (b) takes or uses any name, title, addition or description implying that he is duly qualified to act as a solicitor or a notary public [<sup>F81</sup>[<sup>F82</sup>, registered European lawyer or registered foreign lawyer], as the case may be,] or recognised by law as so qualified;

shall be guilty of an offence.

[<sup>F83</sup>In this section, "<sup>F77</sup> . . . person" does not include an incorporated practice].

[<sup>F84</sup>(2)] Any person (including a body corporate) who either by himself or together with others, wilfully and falsely—

- (a) pretends to be an incorporated practice;



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(b) takes or uses any name, title, addition or description implying that he is an incorporated practice,  
shall be guilty of an offence.

(3) <sup>F85</sup> .....

#### Textual Amendments

- F76** S. 31 renumbered as subsection (1) of that section by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. 1 para. 8**
- F77** Word in s. 31(1) repealed (22.5.2000) by [S.S.I. 2000/121](#), regs. 1(1), 37(1), **Sch. 1 para. 1(8)(a)**
- F78** Words in s. 31(1) inserted (22.5.2000) by [S.S.I. 2000/121](#), regs. 1(1), 37(1), **Sch. 1 para. 1(8)(b)**
- F79** S. 31(1)(aa) inserted (22.5.2000) by [S.S.I. 2000/121](#), regs. 1(1), 37(1), **Sch. 1 para. 1(8)(c)**
- F80** S. 31(1)(ab) inserted (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 6(a)}
- F81** Words in s. 31(1)(b) inserted (22.5.2000) by [S.S.I. 2000/121](#), regs. 1(1), 37(1), **Sch. 1 para. 1(8)(d)**
- F82** Words in s. 31(1)(b) substituted (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 6(b)}
- F83** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. 1 para. 8(a)**
- F84** S. 31(2)(3) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. 1 para. 8(b)**
- F85** S. 31(3) repealed (3.6.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), s. 74, **Sch. 9**; [S.I. 1991/1252](#), art. 3, **Sch. 1**

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

- C3** S. 31 amended by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 278(2)(3)
- C4** S. 31 modified (31.10.1994) by [1994 c. 26, s. 86\(2\)](#); [S.I. 1994/2550](#), art. 2

### 32 Offence for unqualified persons to prepare certain documents.

(1) Subject to the provisions of this section [<sup>F86</sup>and regulations 6, 11, 12 and 13 of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000], any unqualified person (including a body corporate) who draws or prepares—

- (a) any writ relating to heritable or moveable estate; or
- (b) any writ relating to any [<sup>F87</sup>action or proceedings in any court]; or
- (c) any papers on which to found or oppose an application for a grant of confirmation in favour of executors,

shall be guilty of an offence.

(2) Subsection (1) shall not apply—

- (a) to an unqualified person if he proves that he drew or prepared the writ or papers in question without receiving, or without expecting to receive, either directly or indirectly, any fee, gain or reward [<sup>F88</sup>(other than by way of remuneration paid under a contract of employment)]; or
- (b) to an advocate; or
- (c) to any public officer drawing or preparing writs in the course of his duty; or
- (d) to any person employed merely to engross any writ [<sup>F89</sup>or
- (e) an incorporated practice.]

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- [<sup>F90</sup>(2A) Subsection (1)(a) shall not apply to a [<sup>F91</sup>“conveyancing practitioner”] providing conveyancing services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.
- (2B) Subsection (1)(b) shall not apply to a person who is, by virtue of an act of sederunt made under section 32 (power of Court of Session to regulate procedure) of the <sup>M2</sup>Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.
- (2C) Subsection (1)(c) shall not apply to an executry practitioner or a recognised financial institution providing executry services within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.]
- (3) In this section “writ” does not include—
- (a) a will or other testamentary writing;
  - (b) a document *in re mercatoria*, missive or mandate;
  - (c) a letter or power of attorney;
  - (d) a transfer of stock containing no trust or limitation thereof.
- [<sup>F92</sup>(4) For the purposes of this section, “unqualified person” includes a registered foreign lawyer.]

#### Textual Amendments

- F86** Words in s. 32(1) inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(9)**
- F87** Words substituted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 7**
- F88** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(6)(a)**
- F89** S. 32(2)(e) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 9**
- F90** S. 32(2A)–(2C) inserted (1.3.1997 for all purposes except in relation to a recognised financial institution and except as to subsection (2B) the insertion of which came into force 1.1.1991; see S.I. 1990/2624) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(6)(b)**; S.I. 1996/2894, art. 3, **Sch.** as amended by S.I. 1996/2966, **art. 2**
- F91** Words in s. 32(2A) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2)(3), **Sch. 4 para. 7**; S.S.I. 2003/384, **art. 2**
- F92** S. 32(4) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 7}

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

- C5** S. 32 amended (17.5.2004) by S.I. 1978/1910, arts. 5, 8, 18(1), **Sch. Pt. 2** (as amended by The European Communities (Services of Lawyers) Amendment (Scotland) Order (S.S.I. 2004/186), {art. 7(b)});

#### Marginal Citations

- M2** 1971 c.58(36:3).

### 33 Unqualified persons not entitled to fees, etc.

[<sup>F93</sup>Subject to the provisions of regulations 12 and 13 of the European Communities (Lawyer’s Practice) (Scotland) Regulations 2000,]no fee, reward, outlay or expenses on account of or in relation to any act or proceeding done or taken by any person who—



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- (a) acts as a solicitor or as a notary public without being duly qualified so to act; or
- (b) not being so qualified, . . . <sup>F94</sup> frames or draws any writs to which section 32 applies,

shall be recoverable by any person in any action or matter.

[<sup>F95</sup>This section does not apply to an incorporated practice.][<sup>F96</sup>or in relation to writs framed or drawn by a person who is, by virtue of an act of sederunt made under section 32 of the Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.]

#### Textual Amendments

- F93** Words in s. 33 inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(10)**
- F94** Words repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1)(2), Sch. 1 para. 8, **Sch. 2**
- F95** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 10**
- F96** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, **Sch. 8 Pt. II para. 29(7)**

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

- C6** S. 33 excluded (17.5.2004) by S.I. 1978/1910, **art. 18(3)** (as amended by The European Communities (Services of Lawyers) Amendment (Scotland) Order (S.S.I. 2004/186), {art. 6(b)})

### [<sup>F97</sup>33A Rules as to professional practice, conduct and discipline.

- (1) Any communication made to or by an incorporated practice in the course of its acting as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the body had at all material times been a solicitor acting for the client.
- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, shall, with any necessary modifications, have effect in relation to an incorporated practice as it has effect in relation to a solicitor.]

#### Textual Amendments

- F97** S. 33A inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 11**

### [<sup>F98</sup>33B

- (1) Any communication made to or by a registered foreign lawyer in the course of his acting as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the registered foreign lawyer had at all material times been a solicitor acting for a client.
- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, shall, with any necessary modifications, have effect in relation to a registered foreign lawyer as it has effect in relation to a solicitor.]

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#### **Textual Amendments**

**F98** **S. 33B** inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (**S.S.I. 2004/383**), {reg. 8}

**Status:**

Point in time view as at 01/10/2006.

**Changes to legislation:**

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