



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART VI

#### MISCELLANEOUS AND GENERAL

##### *General*

#### **63 Penalties and time limit for prosecution of offences**

- (1) Any person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding [<sup>F1</sup>[<sup>F2</sup>level 3]level 4 on the standard scale][<sup>F3</sup>] and to imprisonment for a period not exceeding one month.]
- (2) Notwithstanding any provision of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1975, the prosecution of any offence under this Act shall be commenced within 6 months of its first discovery by the prosecutor or in any event within 2 years after the commission of that offence.
- [<sup>F4</sup>(3) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—
  - (a) any director, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Act is committed by a partnership or by an unincorporated association (other than a partnership) and is proved to have been committed with the consent or connivance of a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he (as well as the partnership or association) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.]

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#### Textual Amendments

- F1** Words “level 4” substituted (*prosp.*) for “level 3” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(14)(a)(i)**
- F2** Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G**
- F3** Words repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), Sch. 8 Pt. II para. 29(14)(a)(ii), **Sch. 9**
- F4** S. 63(3)(4) inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(14)(b)**

#### Marginal Citations

- M1** 1975 c.21.

## 64 Service of notices etc.

Any notice or other document which is required or authorised under this Act to be given to, or served on, any person shall be taken to be duly given or served if it is delivered to him or left at, or sent by post to, his last-known place of business or residence [<sup>F5</sup>or, in the case of an incorporated practice, it is left at, or delivered or sent by post to, its registered office].

#### Textual Amendments

- F5** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 32**

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

- C1** S. 64 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}

## [<sup>F6</sup>64A Advisory and supervisory functions of the Director General of Fair Trading.

- (1) Before considering any rule—
  - (a) made under section 25A(4) or (5); or
  - (b) such as is mentioned in section 34(3A),
 the Secretary of State shall send a copy of the proposed rule in question to the Director.
- (2) The Director shall consider whether the rule in question would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Secretary of State as he thinks fit.
- (4) The Director may publish any advice given by him under subsection (3).
- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) any matter—
  - (a) which relates to the affairs of a particular person; and

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- (b) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.
- (6) For the purposes of the law of defamation, the publication of any advice or report by the Director under this section shall be absolutely privileged.]

#### Textual Amendments

**F6** Ss. 64A–64D inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s.43; S.I. 1991/1252, art. 3, Sch.1

#### [<sup>F7</sup>64B Duty of Secretary of State.

When he has received advice under section 64A(3) in relation to a rule made under section 25A(4) or (5) or such as is mentioned in section 34(3A), the Secretary of State may, having considered—

- (a) that advice;
- (b) whether the interests of justice require that there should be such a rule; and
- (c) in relation to a rule made under section 25A(5), any relevant practice obtaining in the sheriff court,

approve or refuse to approve the rule.]

#### Textual Amendments

**F7** Ss. 64A–64D inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s.43; S.I. 1991/1252, art. 3, Sch.1

#### [<sup>F8</sup>64C Investigatory powers of the Director.

- (1) For the purpose of investigating any matter under section 64A, the Director may by notice in writing—
- (a) require any person to produce to him or to any person appointed by him for the purpose, at a time and place specified in the notice, any documents which are specified or described in the notice and which—
    - (i) are in that person's custody or under that person's control; and
    - (ii) relate to any matter relevant to the investigation; or
  - (b) require any person carrying on any business to furnish to him (whithin such time and in such manner and form as the notice may specify) such information as may be specified or described in the notice.
- (2) A person shall not be required under this section to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on the grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.
- (3) Subsections (5) to (8) of section 85 of the <sup>M2</sup>Fair Trading Act 1973 shall apply in relation to a notice under this section as they apply in relation to a notice under subsection (1) of that section.]

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#### Textual Amendments

**F8** Ss. 64A–64D inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s.43; S.I. 1991/1252, art. 3, Sch.1

#### Marginal Citations

**M2** 1973 c.41(124:1).

VALID FROM 20/06/2003

### [<sup>F9</sup> 64CA Enforcement of notices under section 64C

- (1) The court may, on an application by the Office of Fair Trading, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 64C(1).
- (2) An application under subsection (1) shall include details of the possible failure which the Office of Fair Trading considers has occurred.
- (3) In enquiring into a case under subsection (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Subsections (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in subsection (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 64C(1).
- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate or is a partnership constituted under the law of Scotland, the court may punish any director, officer or (as the case may be) partner of the defaulter as it would have been able to punish that director, officer or partner had he been guilty of contempt of court.

#### Textual Amendments

**F9** Ss. 64CA, 64CB inserted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order (S.I. 2003/1398), art. 2, {Sch. para. 2(3)}

VALID FROM 20/06/2003

### 64CB Altering, etc. documents required to be produced under section 64C

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- (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under section 64C(1).
- (2) A person who commits an offence under subsection (1) shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

#### Textual Amendments

**F9** Ss. 64CA, 64CB inserted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order (S.I. 2003/1398), art. 2, {Sch. para. 2(3)}

### [<sup>F10</sup>64D Review of rules approved by the Secretary of State.

- (1) Without prejudice to the power of the Council to review any rule made by them, where the Secretary of State has approved a rule under section 64B he may, and if so requested by the Lord President shall, require the Council to review its terms.
- (2) When they have reviewed a rule following a requirement made under subsection (1), the Council may revise the rule in the light of that review, and shall then submit the rule as revised or, if they have not revised it, as previously approved to the Lord President and the Secretary of State.
- (3) Where the Lord President and the Secretary of State are agreed that the terms of the rule as submitted to them are satisfactory, the Secretary of State shall approve the rule, and may direct the Council to bring it into force as soon as is practicable.
- (4) Where either the Secretary of State or the Lord President is of the view that any rule, as submitted to them, is not satisfactory, but they do not agree as to what the terms of the rule should be, the rule shall continue to have effect as previously approved.
- (5) Where the Secretary of State and the Lord President agree both that any rule submitted to them under subsection (2) is not satisfactory, and as to what the terms of the rule should be, the Secretary of State may direct the Council—
  - (a) to amend the rule in such manner as he and the Lord President consider appropriate; and
  - (b) to bring the rule, as so amended, into force as soon as is practicable.
- (6) The provisions of sections 64A and 64B apply to rules submitted to the Secretary of State under this section as they apply to rules submitted to him under sections 25A(9) or (10) and 34(3A).]

#### Textual Amendments

**F10** Ss. 64A–64D inserted (3.6.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s.43; S.I. 1991/1252, art. 3, Sch.1

## 65 Interpretation.

- (1) In this Act, except in so far as the context otherwise requires—

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“accounts rules” has the meaning given by section 35;

“accountant’s certificate rules” has the meaning given by section 37(3);

“advocate” means a member of the Faculty of Advocates;

[<sup>F11</sup>“building society” means a building society within the meaning of the <sup>M3</sup>Building Societies Act 1986;]

“client account” means a current or deposit or savings account [<sup>F12</sup>at a bank or with a building society], or a deposit receipt, at a bank, being an account or, as the case may be, a deposit receipt in the title of which the word “client”, “trustee”, “trust” or other fiduciary term appears, including—

- (a) an account or deposit receipt for a client whose name is specified in the title of the account on deposit receipt, and
- (b) an account such as is mentioned in paragraphs (a) and (b) of section 35(1);

“the Council” has the meaning given by section 3;

“the Court” means the Court of Session;

[<sup>F13</sup>“the Director” means the Director General of Fair Trading;

“foreign lawyer” means a person who is not a solicitor or an advocate but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outwith Scotland;]

<sup>F14</sup>

.....  
“functions” includes powers and duties;

[<sup>F15</sup>“inadequate professional services” means professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor, and cognate expressions shall be construed accordingly; and references to the provision of inadequate professional services shall be construed as including references to not providing professional services which such a solicitor ought to have provided;]

[<sup>F16</sup>“incorporated practice” has the meaning given by section 34(1A)(c);]

“judge” includes sheriff;

[<sup>F17</sup>“law centre” means a body—

- (a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and
- (b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;]

[<sup>F18</sup>“lay observer” has the meaning given by section 49;]

“Lord President” means the Lord President of the Court of Session;

[<sup>F19</sup>“multi-disciplinary practice” means a body corporate or a partnership—

- (a) having as one of its directors or, as the case may be, partners, a solicitor or an incorporated practice; and
- (b) which offers services, including professional services such as are provided by individual solicitors, to the public; and
- (c) where that solicitor or incorporated practice carries out, or supervises the carrying out of, any such professional services as may lawfully be carried out only by a solicitor;

“multi-national practice” means—

- (a) a partnership whose members are solicitors or incorporated practices and registered foreign lawyers; or

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- (b) a body corporate whose members include registered foreign lawyers, and membership of which is restricted to solicitors, incorporated practices, registered foreign lawyers and other multi-national practices;]  
“notary public” means a notary public duly admitted in Scotland;  
“practice year” means the year ending on 31st October;  
“practising certificate” has the meaning given by section 4;  
“property” includes property, whether heritable or moveable, and rights and interests in, to or over such property;  
[<sup>F20</sup>“registered foreign lawyer” means a foreign lawyer who is registered under section 60A;]  
“the roll” has the meaning given by section 7;  
“the Society” has the meaning given by section 1;  
[<sup>F21</sup>“Scottish legal services ombudsman” means the ombudsman appointed under section 34 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;]  
“solicitor” means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of this Act;  
“the Tribunal” has the meaning given by section 50;  
“unqualified person” means a person [<sup>F22</sup>, other than a multi-disciplinary practice,] who is not qualified under section 4 to act as a solicitor.

- (2) Unless the context otherwise requires a reference—
- (a) in any enactment to law agents includes solicitors;
  - (b) in any enactment to the register of law agents kept in pursuance of the <sup>M4</sup>Law Agents (Scotland) Act 1873 includes the roll;
  - (c) in any enactment or instrument to the Solicitors Discipline (Scotland) Committee shall be construed as a reference to the Tribunal;
  - (d) in any enactment or instrument or other document to the General Council of Solicitors in Scotland shall be construed as a reference to the Council;
  - (e) in any enactment to a solicitor’s being entitled to practise in the Court, or in any other court, or to act in any matter, by reason of his being enrolled in, or of his having subscribed, the list of solicitors practising in that court, shall be construed as a reference to his being entitled so to practise or act be reason of his name being included in the appropriate list provided under section 20.
- (3) In this Act references to any enactment shall, except in so far as the context otherwise requires, be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in this Act.
- (4) In this Act, except in so far as the context otherwise requires,—
- (a) any reference to a numbered Part, section or Schedule is a reference to the Part or Section of, or the Schedule to, this Act so numbered;
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered;
  - (c) a reference in a section, subsection or Schedule to a numbered or lettered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered or lettered; and
  - (d) a reference to any provision of an Act (including this Act) includes a reference to any Schedule incorporated in the Act by that provision.

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### Textual Amendments

- F11** Definition inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 20(a)**
- F12** Words inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(1), **Sch. 1 para. 20(b)**
- F13** Definitions in s. 65(1) 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(15)(a)**; S.I. 1991/1252, art. 3, **Sch.1**
- F14** Definition, which was inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 63:3), **s. 25(c)**, now repealed by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), s. 6(2), **Sch. 2**
- F15** Definition inserted by Solicitors (Scotland) Act 1988 (c. 42, SIF 76:2), **s. 5(1)**
- F16** Definition inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 33**
- F17** Definition inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(15)(b)**
- F18** Definition repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 9**
- F19** Definitions inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(15)(c)**
- F20** Definition inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(15)(d)**
- F21** Definition in s. 65(1) 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(15)(e)**; S.I. 1991/1252, art. 3, **Sch.1**
- F22** Words inserted (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), **Sch. 8 Pt. II para. 29(15)(f)**

### Marginal Citations

- M3** 1986 c.53(16).
- M4** 1873 c.63.

## 66 Transitional and savings provisions, and repeals.

- (1) Schedule 6 (Transitional and savings provisions) shall have effect, but the provisions of that Schedule shall not be taken as prejudicing the operation of section 16 of the <sup>M5</sup>Interpretation Act 1978 (general savings in respect of repeals).
- (2) The enactments specified in Schedule 7 are hereby repealed to the extent shown in column 3 of that Schedule.

### Modifications etc. (not altering text)

- C2** 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.

### Marginal Citations

- M5** 1978 c.30.

## 67 Citation, extent and commencement.

- (1) This Act may be cited as the Solicitors (Scotland) Act 1980.
- (2) This Act extends to Scotland only.



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- (3) This Act shall come into operation on the expiration of one month from the date on which it is passed.

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