



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART III

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

##### *Powers of Council to intervene*

#### **41 Appointment of judicial factor.**

Where the Council, in exercise of any power conferred on them by [<sup>F1</sup>rules made by virtue of section 34(1D) or] the accounts rules, have caused an investigation to be made of the books, accounts and other documents of a solicitor [<sup>F2</sup>or an incorporated practice], and, on consideration of the report of the investigation, the Council are satisfied—

- (a) that the solicitor [<sup>F3</sup>or, as the case may be, the incorporated practice] has failed. . . <sup>F4</sup> to comply with the provisions of those rules, and
- (b) that, [<sup>F5</sup>, in the case of a solicitor, in connection with his practice as such], either—
  - (i) his liabilities exceed his assets in the business, or
  - (ii) his books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether his liabilities exceed his assets, or
  - (iii) there is reasonable ground for apprehending that a claim on the Guarantee Fund may arise [<sup>F6</sup>; or
- (c) that, in the case of an incorporated practice, either—
  - (i) its liabilities exceed its assets, or
  - (ii) its books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether its liabilities exceed its assets, or
  - (iii) there is reasonable ground for apprehending that a claim on the guarantee fund may arise].

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**Changes to legislation:** *Solicitors (Scotland) Act 1980, Section 41 is up to date with all changes known to be in force on or before 16 April 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*

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the Council may apply to the Court for the appointment of a judicial factor on the estate of the solicitor [<sup>F7</sup>or, as the case may be, of the incorporated practice]; and the Court, on consideration of the said report and after giving the solicitor [<sup>F8</sup>or, as the case may be, the incorporated practice] an opportunity of being heard, may appoint a judicial factor on [<sup>F9</sup>such] estate, or do otherwise as seems proper to it.

#### **Textual Amendments**

- F1** Words in s. 41 inserted (10.1.2019) by [The Money Laundering and Terrorist Financing \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1337\)](#), regs. 1(2), **6(5)**
- F2** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(a)**
- F3** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(b)**
- F4** Words repealed by [Solicitors \(Scotland\) Act 1988 \(c. 42, SIF 76:2\)](#), s. 6(1)(2), Sch. 1 para. 13, **Sch. 2**
- F5** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(c)**
- F6** S. 41(c) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(d)**
- F7** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(e)**
- F8** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(f)**
- F9** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 19(g)**

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

- C1** S. 41 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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**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\(2\)\(b\)](#)