



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART II

LEGAL SERVICES

Conveyancing and executry services

16 The Scottish Conveyancing and Executry Services Board

- (1) There shall be a Board, to be known as the Scottish Conveyancing and Executry Services Board, which shall have the principal functions of regulating—
 - (a) the provision of conveyancing services by persons other than—
 - (i) solicitors; and
 - (ii) persons mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate and confirmations); and
 - (b) the provision of executry services by persons other than—
 - (i) solicitors;
 - (ii) persons referred to in paragraph (a)(ii) above; and
 - (iii) recognised financial institutions.
- (2) The Secretary of State may, with the consent of the Treasury, make grants to the Board towards expenses incurred, or to be incurred, by them in connection with—
 - (a) the initial establishment of the Board; and
 - (b) the discharge by the Board of their functions.
- (3) Any grant made under subsection (2) above may be made subject to such terms and conditions (including conditions as to repayment) as the Secretary of State, with the consent of the Treasury, thinks fit and the Secretary of State may, with such consent, vary such terms and conditions after the grant is made.

- (4) Part I of Schedule 1 to this Act (constitution, duties, powers and status of the Board) shall have effect in relation to the Board.

17 Qualified conveyancers

- (1) The Board shall establish and maintain a register of qualified conveyancers, which shall be available for inspection by any person without charge.
- (2) Where, on an application made to them by a natural person in such form as they may determine, and on the provision of such information in connection with the application as they consider necessary, the Board are satisfied that the applicant—
- (a) is a fit and proper person to provide conveyancing services as a qualified conveyancer; and
 - (b) complies with the requirements of rules made under subsection (3) below,
- the Board shall grant the application and shall enter the applicant's name in the register of qualified conveyancers.
- (3) The Board shall, subject to subsection (15) below and after such consultation as they consider appropriate, make rules as to the requirements to be satisfied by any person applying for registration under subsection (2) above, and such rules shall, in particular, make provision as to—
- (a) educational qualifications; and
 - (b) practical training.
- (4) Where the Board refuse an application under subsection (2) above they shall give the applicant written reasons for their decision.
- (5) Where the Board refuse an application under subsection (2) above the applicant may, within 21 days of the date on which the Board's decision is intimated to him, apply to the Board to review their decision.
- (6) Where the Board have reviewed a decision mentioned in subsection (5) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to him, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (7) Where a qualified conveyancer informs the Board that he intends to provide conveyancing services to the public for a fee, gain or reward and—
- (a) satisfies the Board that he has made adequate arrangements for the satisfaction of any successful claims against him arising out of such provision by him of such services; or
 - (b) participates in the arrangements made by the Board for that purpose under subsection (13)(b) below,
- the Board shall make an annotation on the register against his name to the effect that he is an independent qualified conveyancer; and where he subsequently informs them that he intends to cease providing such services to the public for a fee, gain or reward, they shall remove that annotation.
- (8) Any person or body other than—
- (a) an independent qualified conveyancer; or
 - (b) a solicitor; or

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- (c) an incorporated practice within the meaning of section 65 of the 1980 Act (interpretation); or
 - (d) a multi-disciplinary practice within the meaning of that section,
- who employs a qualified conveyancer under a contract of employment for the purpose of providing conveyancing services for persons other than himself or, as the case may be, themselves, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) Where a qualified conveyancer applies to the Board to remove his name from the register the Board shall—
- (a) where, in the case of an independent qualified conveyancer, they are satisfied that he has made adequate arrangements with respect to the business he then has in hand; and
 - (b) in any other case, without further enquiry,
- grant the application and amend the register accordingly.
- (10) The Board shall send to the Keeper of the Registers of Scotland—
- (a) as soon as practicable after 1st April in each year, a list of all qualified conveyancers; and
 - (b) written notice of any subsequent change to the register of qualified conveyancers.
- (11) The Secretary of State shall, subject to section 40 of this Act and after consultation with such persons as he considers appropriate, by regulations make such provision as he thinks fit with a view to maintaining appropriate standards of conduct and practice of independent qualified conveyancers, and such regulations shall, in particular, make provision with respect to—
- (a) the manner in which such conveyancers conduct the provision of conveyancing services;
 - (b) conflicts of interest;
 - (c) the contractual obligations of such conveyancers;
 - (d) the holding of clients' money; and
 - (e) the disclosure of and accounting for commissions.
- (12) Regulations under subsection (11) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (13) The Board shall, in relation to the provision of conveyancing services by independent qualified conveyancers, and subject to subsection (14) below—
- (a) establish and maintain suitable procedures for dealing with any complaints made to them in connection with the provision of conveyancing services by such conveyancers; and
 - (b) make suitable arrangements (whether by means of insurance policies or otherwise) to secure that any successful claims made against such a conveyancer in connection with the provision of conveyancing services are satisfied.
- (14) Before establishing procedures or making arrangements under subsection (13)(a) or, as the case may be, (b) above, the Board shall submit particulars of the proposed procedures or arrangements to the Secretary of State for his approval.

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- (15) Before making any rules under subsection (3) above, the Board shall submit the rules to the Secretary of State for his approval, and before approving any such rules the Secretary of State shall consult—
- (a) the Director in accordance with section 40 of this Act; and
 - (b) such other persons as he considers appropriate.
- (16) It shall be the duty of—
- (a) an independent qualified conveyancer to comply with the requirements of regulations made under subsection (11) above and any direction of the Board under section 20(2)(a) or (b) of this Act; and
 - (b) the Board to ensure such compliance.
- (17) Where, under or by virtue of any enactment—
- (a) a warrant of registration is required for recording any deed in the General Register of Sasines; or
 - (b) an application for registration is required for registering an interest in land in the Land Register of Scotland,
- any reference in that or any other enactment or any subordinate instrument to such a warrant or application being signed by a solicitor or agent shall be construed as including a reference to the warrant or application being signed by a qualified conveyancer, and any enactment or subordinate instrument making provision as to the form of such a warrant or application shall, with the necessary modifications, apply in relation to a qualified conveyancer.
- (18) A qualified conveyancer who signs a warrant or application by virtue of subsection (17) above shall, in addition to any matters required to be specified after his signature by any enactment or subordinate instrument, specify the independent qualified conveyancer, solicitor or incorporated practice by whom he is employed or, where he is himself an independent qualified conveyancer, his designation as such.
- (19) Any person who—
- (a) wilfully and falsely—
 - (i) pretends to be a qualified conveyancer; or
 - (ii) takes or uses any name, title, addition or description implying that he is a qualified conveyancer; or
 - (b) being a qualified conveyancer, provides conveyancing services at a time when his registration as such is suspended,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (20) Any qualified conveyancer not registered as an independent qualified conveyancer under subsection (7) above who—
- (a) wilfully and falsely—
 - (i) pretends to be an independent qualified conveyancer; or
 - (ii) takes or uses any name, title, addition or description implying that he is an independent qualified conveyancer; or
 - (b) provides conveyancing services to the public for a fee, gain or reward,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (21) Where an offence under subsection (19)(a) above 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—
- (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.
- (22) Where an offence under subsection (19)(a) above is committed by a partnership and is proved to have been committed with the consent or connivance of a partner, he (as well as the partnership) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (23) Any independent qualified conveyancer who provides conveyancing services upon the account of, or for the profit of, any person other than—
- (a) a solicitor;
 - (b) an incorporated practice within the meaning of section 65 of the 1980 Act;
 - (c) a multi-disciplinary practice within the meaning of that section; or
 - (d) another independent qualified conveyancer,
- knowing that person not to be a solicitor, incorporated practice, multi-disciplinary practice or independent qualified conveyancer, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (24) Any rule imposed by any professional or other body which purports to prevent a solicitor or any person mentioned in section 32(2) of the 1980 Act (unqualified persons who may draw and prepare documents relating to heritable estate etc.) from—
- (a) acting as an employee of an independent qualified conveyancer in connection with the provision of conveyancing services; or
 - (b) acting on behalf of an independent qualified conveyancer in connection with the provision of such services,
- shall be of no effect.

18 Executry practitioners

- (1) The Board shall establish and maintain a register of executry practitioners, which shall be available for inspection by any person without charge.
- (2) Where, on an application made to them in such form as they may determine, the Board are satisfied that the applicant fulfils the conditions specified in subsection (3) below, the Board shall grant the application and shall enter the applicant's name in the register of executry practitioners.
- (3) The conditions referred to in subsection (2) above are that the applicant—
- (a) is a fit and proper person to provide executry services;
 - (b) complies with the requirements prescribed by regulations made under subsection (10) below; and
 - (c) maintains suitable arrangements (whether by means of insurance policies or otherwise) to satisfy any successful claims made against it in connection with the provision of executry services.

- (4) The Board may require an applicant under subsection (2) above to provide such further information in connection with the application as they consider necessary.
- (5) Where the Board—
- (a) grant an application under subsection (2) above, they may attach such conditions as they may determine, and shall record any such conditions against the applicant's name in the register;
 - (b) refuse such an application, they shall give the applicant written reasons for their decision.
- (6) Where the Board—
- (a) grant an application under subsection (2) above subject to conditions; or
 - (b) refuse such an application,
- the applicant may, within 21 days of the date on which the Board's decision is intimated to it, apply to the Board to review their decision.
- (7) Where the Board have reviewed a decision mentioned in subsection (6) above the applicant may, within 21 days of the date on which the outcome of such review is intimated to it, apply to the Court of Session and the Court may make such order in the matter as it thinks fit.
- (8) Where an executry practitioner applies to the Board to remove its name from the register the Board shall, if they are satisfied that the practitioner has made adequate arrangements with respect to the business it then has in hand, grant the application and amend the register accordingly.
- (9) The Board shall send to the Keeper of the Registers of Scotland and to each sheriff clerk—
- (a) as soon as practicable after 1st April in each year, a list of all executry practitioners; and
 - (b) written notice of any subsequent change to the register of executry practitioners.
- (10) The Secretary of State shall, subject to section 40 of this Act and after consultation with such persons as he considers appropriate, by regulations make such provision as he thinks fit with a view to maintaining appropriate standards of conduct and practice of executry practitioners and such regulations shall, in particular, make provision as to educational qualifications and practical training.
- (11) Regulations under subsection (10) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (12) It shall be the duty of—
- (a) an executry practitioner to comply with the requirements of regulations made under subsection (10) above and any direction of the Board under section 20(2)(a) or (b) of this Act; and
 - (b) the Board to ensure such compliance.
- (13) Any person who—
- (a) wilfully and falsely—
 - (i) pretends to be an executry practitioner; or

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- (ii) takes or uses any name, title, addition or description implying that he is an executry practitioner; or
 - (b) being an executry practitioner, provides executry services at a time when his registration as such is suspended,shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (14) Where an offence under subsection (13) above 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.
- (15) Where an offence under subsection (13) above 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.

19 Executry services by recognised financial institutions

- (1) Subject to subsection (3) below, a recognised financial institution may provide executry services if it has notified the Board that—
 - (a) it intends to do so;
 - (b) it complies with such requirements as may be prescribed by regulations made by the Secretary of State with respect to the educational qualifications and practical training of those of its employees who are to be engaged in the provision of executry services; and
 - (c) it is a member of, or otherwise subject to, a scheme which—
 - (i) has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of executry services; and
 - (ii) complies with such requirements as may be prescribed by regulations made by the Secretary of State with respect to matters relating to such complaints.
- (2) In this section “recognised financial institution” means any institution which is—
 - (a) an institution authorised by the Bank of England to operate a deposit-taking business under Part I of the Banking Act 1987;
 - (b) a building society authorised to raise money from its members by the Building Societies Commission under section 9 of the Building Societies Act 1986;
 - (c) a body authorised to carry on insurance business under section 3 or 4 of the Insurance Companies Act 1982; or
 - (d) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (a), (b) or (c) above whose business, or any part of whose business, consists of the provision of executry services.
- (3) Where—

- (a) a recognised financial institution ceases (for whatever reason) to comply with the requirements with respect to educational qualifications and practical training referred to in paragraph (b) of subsection (1) above;
 - (b) a recognised financial institution ceases (for whatever reason) to be a member of, or otherwise subject to, a scheme referred to in a notice given by it under that subsection; or
 - (c) such a scheme ceases to comply with the requirements mentioned in paragraph (c)(ii) of that subsection,
- the recognised financial institution shall notify the Board of that fact and shall forthwith cease providing executry services.
- (4) The Board shall maintain a list of recognised financial institutions which have given notice under subsection (1) above and shall make the list available to any person without charge.
 - (5) The Board shall, as soon as practicable after 1st April in each year, send a copy of the list maintained under subsection (4) above to the Keeper of the Registers of Scotland and to each sheriff clerk.
 - (6) This section, so far as it relates to a body or subsidiary mentioned in subsection (2)(c) or (d) above, is without prejudice to section 16 of the Insurance Companies Act 1982 (restriction of insurance companies to insurance business).
 - (7) Regulations under subsection (1) above shall be made by statutory instrument and no regulations shall be made under that subsection unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

20 Professional misconduct, inadequate professional services, etc

- (1) Where, after such inquiry as they consider appropriate (whether or not following a complaint to them) and after giving the practitioner concerned an opportunity to make representations, the Board are satisfied that a practitioner—
 - (a) is guilty of professional misconduct;
 - (b) has provided inadequate professional services;
 - (c) has failed to comply with regulations made under section 17(11) or 18(10) of this Act; or
 - (d) has been convicted of a criminal offence rendering him no longer a fit and proper person to provide conveyancing services as a qualified conveyancer or, as the case may be, executry services as an executry practitioner,
 they may take such of the steps set out in subsection (2) below as they think fit and shall, without prejudice to subsection (6) below, intimate their decision to the practitioner by notice in writing.
- (2) The steps referred to in subsection (1) above are—
 - (a) to determine that the amount of fees and outlays which the practitioner may charge in respect of such services as the Board may specify shall be—
 - (i) nil; or
 - (ii) such amount as the Board may specify in the determination,
 and to direct the practitioner to comply, or secure compliance, with such of the requirements set out in subsection (5) below as appear to them to be necessary to give effect to the determination;

- (b) to direct the practitioner to secure the rectification at his or its own expense of any such error, omission or other deficiency arising in connection with the services as the Board may specify;
 - (c) to attach conditions (or, as the case may be, further conditions) to the registration of the practitioner or to vary any condition so attached;
 - (d) to suspend or revoke that registration;
 - (e) subject to subsection (3) below, to impose on the practitioner a fine not exceeding £10,000;
 - (f) in a case where the practitioner has provided inadequate professional services, to direct the practitioner to pay to the client by way of compensation such sum, not exceeding £1,000, as the Board may specify;
 - (g) to censure the practitioner; and
 - (h) to make a report of the Board's findings to any other person exercising functions with respect to—
 - (i) the practitioner; or
 - (ii) any person employed by or acting on behalf of the practitioner in connection with the provision of the services.
- (3) The Board shall not impose a fine under subsection (2)(e) above where, in relation to the subject matter of the Board's inquiry, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than two years.
- (4) Any fine imposed under subsection (2)(e) above shall be treated for the purposes of section 203 of the Criminal Procedure (Scotland) Act 1975 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (5) The requirements referred to in subsection (2)(a) above are—
- (a) to refund, whether in whole or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the practitioner in connection with the services; and
 - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (6) Where the Board make a direction under subsection (2)(a), (b) or (f) above they shall, by notice in writing, require the practitioner to which the direction relates to give, within such period being not less than 21 days as the notice may specify, an explanation of the steps which he or it has taken to comply with the direction.
- (7) Where a practitioner—
- (a) fails to comply with a notice under subsection (6) above; or
 - (b) complies with such a notice but the Board are not satisfied as to the steps taken by the practitioner to comply with the direction to which the notice relates,
- the Board may apply to the Court of Session for an order requiring the practitioner to comply with the direction to which the notice relates within such time as the court may order.
- (8) Where the Board take a step set out in subsection (2)(c) or (d) above and—
- (a) the period specified in subsection (11)(a) or (b) below has expired without an application for review or, as the case may be, an application to the Court of Session having been made; or

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- (b) where such an application is made, the matter is finally determined in favour of the Board's decision or the application is withdrawn,
they shall amend the register of executry practitioners or, as the case may be, the register of qualified conveyancers accordingly.
- (9) The Board shall—
- (a) subject to subsection (10) below, publish every decision taken by them under subsection (1) above (including a decision that they are not satisfied as to the matters mentioned in subsection (1)(a) to (d)); and
 - (b) make available a copy of every decision published under paragraph (a) above for inspection by any person without charge.
- (10) In carrying out their duty under subsection (9) above, the Board may refrain from publishing any names or other information which would, in their opinion, damage or be likely to damage the interests of persons other than—
- (a) the practitioner to whom the decision relates; or
 - (b) where the practitioner is an individual, his partners; or
 - (c) his or their families,
- but where they so refrain, they shall publish their reasons for so doing.
- (11) Where the Board take a step set out in subsection (2)(a) to (g) above, the practitioner concerned may—
- (a) within 21 days of the date on which the Board's decision is intimated to it or him, apply to the Board to review their decision; and
 - (b) within 21 days of the date on which the outcome of such review is intimated to it or him, apply to the Court of Session, which may make such order in the matter as it thinks fit.
- (12) Part II of Schedule 1 to this Act (Board's powers of investigation for the purposes of this section and section 21) shall have effect.
- (13) The Secretary of State, after consulting the Board, may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend subsection (2)(f) above by substituting for the sum for the time being specified in that provision such other sum as he considers appropriate.
- (14) The taking of any steps under subsection (2) above shall not be founded upon in any proceedings for the purpose of showing that the practitioner in respect of whom the steps were taken was negligent.
- (15) A direction under subsection (2)(f) above to a practitioner to pay compensation to a client shall not prejudice any right of that client to take proceedings against that practitioner for damages in respect of any loss which he alleges he has suffered as a result of that practitioner's negligence, and any sum directed to be paid to that client under that provision may be taken into account in the computation of any award of damages made to him in any such proceedings.
- (16) The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend subsection (2)(e) above by substituting for the amount for the time being specified in that provision such other amount as appears to him to be justified by a change in the value of money.

- (17) In this section “executory practitioner” and “qualified conveyancer” respectively include any executory practitioner or qualified conveyancer whether or not it or he was registered as such at the time when the subject matter of the Board’s inquiry occurred and notwithstanding that subsequent to that time it or he has ceased to be so registered.

21 Board’s intervention powers

- (1) The powers conferred on the Board by this section may be exercised if, after such inquiry (if any) as the Board consider appropriate, it appears to them to be desirable to do so for the purpose of protecting the interests of the clients, or prospective clients, of an independent qualified conveyancer or an executory practitioner (each of whom is in this section referred to as a “relevant practitioner”).
- (2) The Board may, in particular, exercise any such power where it appears to them that a relevant practitioner—
- (a) is no longer a fit and proper person to provide conveyancing services or, as the case may be, executory services;
 - (b) has ceased, for whatever reason, to provide such services; or
 - (c) has failed, or is likely to fail, to comply with regulations made under section 17(11) or, as the case may be, section 18(10) of this Act.
- (3) The Board may direct the relevant practitioner not to dispose of, or otherwise deal with, except in accordance with the terms of the direction—
- (a) any assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent qualified conveyancer or, as the case may be, an executory practitioner; or
 - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (4) The Board may direct the relevant practitioner to transfer to the Board, or to such persons (in this section referred to as “the trustees”) as may be specified in the direction—
- (a) all assets belonging to any client of the practitioner and held by or under the control of the practitioner in connection with his business as an independent qualified conveyancer or, as the case may be, an executory practitioner; or
 - (b) any assets of the practitioner which are specified, or of a kind specified, in the direction.
- (5) A relevant practitioner to whom a direction is given may, within 21 days of the date on which the direction is received by him, apply to the Court of Session, which may make such order in the matter as it thinks fit.
- (6) A relevant practitioner to whom a direction is given shall comply with it as soon as it takes effect (and whether or not he proposes to apply to the Court of Session under subsection (5) above).
- (7) If, on an application to the Court of Session by the Board, the court is satisfied—
- (a) that a relevant practitioner has failed, within a reasonable time, to comply with any direction given to him; or
 - (b) that there is a reasonable likelihood that a relevant practitioner will so fail,

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the court may make an order requiring the practitioner, and any other person whom the court considers it appropriate to subject to its order, to take such steps as the court may direct with a view to securing compliance with the direction.

- (8) Any assets which have been transferred as a result of a direction given under subsection (4) above shall be held by the Board, or by the trustees, on trust for the client or, as the case may be, the practitioner concerned.
- (9) The trustees may deal with any assets which have been transferred to them only in accordance with directions given to them by the Board.
- (10) If the Board have reasonable cause to believe that a relevant practitioner or an employee of a relevant practitioner has been guilty of dishonesty resulting in pecuniary loss to a client of the relevant practitioner, they may apply to the Court of Session for an order that no payment be made by any bank, building society or other body named in the order out of any bank, building society or other account or any sum deposited in the name of the relevant practitioner without the leave of the court and the court may make such an order.
- (11) Any direction under this section—
- (a) shall be given in writing;
 - (b) shall state the reason why it is being given;
 - (c) shall take effect on such date as may be specified in the direction (which may be the date on which it is served on the relevant practitioner); and
 - (d) may be varied or revoked by a further direction given by the Board.
- (12) In this section—
- “assets” includes any sum of money (in whatever form and whether or not in any bank, building society or other account) and any book, account, deed or other document held by the relevant practitioner on his own behalf in connection with his business as a relevant practitioner or on behalf of the client concerned; and
- “independent qualified conveyancer” and “executory practitioner” respectively include any independent qualified conveyancer or executory practitioner whether or not he was registered as such at the time when the matter in relation to which the Board exercise or propose to exercise their powers under this section arose and notwithstanding that subsequent to that time he has ceased to be so registered.

22 Disclosure of documents etc

- (1) Any communication made to or by—
- (a) an independent qualified conveyancer or an executory practitioner in the course of his or its acting as such for a client; or
 - (b) a recognised financial institution in the course of providing executory services for a client,
- shall in any action or proceedings in any court be protected from disclosure on the ground of confidentiality between client and professional legal adviser in like manner as if the conveyancer, practitioner or institution 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 confidentiality between client and professional legal adviser could be maintained, shall, with any necessary modifications, have effect in relation to—

- (a) an independent qualified conveyancer;
- (b) an executry practitioner; and
- (c) a recognised financial institution in relation to the provision of executry services,

as it has effect in relation to a solicitor.

23 Interpretation of sections 16 to 22

In sections 16 to 22 of this Act and this section, except where the context otherwise requires—

“the Board” means the Scottish Conveyancing and Executry Services Board;

“conveyancing services” means the preparation of writs, contracts and other documents in connection with the transfer of heritable property and loans secured over such property, and services ancillary thereto, but does not include any services—

- (a) relating to the arranging of a loan; or
- (b) falling within section 1(1)(a) of the Estate Agents Act 1979;

“executry practitioner” means a person registered under section 18 in the register of executry practitioners;

“executry services” means the drawing and preparation of papers on which to found or oppose an application for a grant of confirmation of executors and services in connection with the administration, ingathering, distribution and winding up of the estate of a deceased person by executors, but does not include anything which constitutes investment business within the meaning of the Financial Services Act 1986;

“inadequate professional services” means professional services which are in any respect not of the quality which could reasonably be expected of a competent practitioner; and references to the provision of inadequate professional services shall be construed as including references to not providing professional services which such a practitioner ought to have provided;

“independent qualified conveyancer” means a person registered as such under section 17(7) in the register of qualified conveyancers;

“practitioner” means an executry practitioner or a qualified conveyancer;

“qualified conveyancer” means a person registered under section 17 in the register of qualified conveyancers; and

“recognised financial institution” has the meaning given to it in section 19(2).