



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART II **S**

LEGAL SERVICES

Miscellaneous and supplementary

37 Admission of solicitors and notaries public. **S**

- (1) For subsection (2) of section 6 of the 1980 Act (admission of persons as solicitors) there shall be substituted the following subsection—

“(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.”

- (2) Section 57 of that Act (admission of notaries public) shall be amended as follows—

- (a) for subsection (1) there shall be substituted—

“(1) The offices and functions of—

- (a) the clerk to the admission of notaries public; and
- (b) the keeper of the register of notaries public,

are hereby transferred to the Council.”;

- (b) in subsection (2), for the words from “grant” to the end there shall be substituted “ direct the Council to register him in the register of notaries public.” ”;

Status: Point in time view as at 15/08/2003.

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- (c) after subsection (2) there shall be inserted the following subsections—
- “(2A) A petition by the Council under section 6(3A) for the admission of a person as a solicitor may, if the person so requests, include an application for the person’s admission as a notary public; and an order on any such petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register him in the register of notaries public.
- (2B) A petition by a person under section 6(2) for his admission as a solicitor may include an application for his admission as a notary public; and an order on any such petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register him in the register of notaries public.”;
- (d) in subsection (4) for the word “solicitor” there shall be substituted “ person” ”; and
- (e) for subsection (5) there shall be substituted—
- “(5) The Council may charge such reasonable fees as they consider appropriate in respect of the admission of any person as a notary public.”.
- (3) In section 58 of that Act (removal from and restoration to the register of names of notaries public)—
- (a) in subsection (1), for the words from “give” to the end there shall be substituted “ strike off or, as the case may be, remove his name from the register of notaries public” ”;
- (b) in subsection (2), for the words from “it” to “thereupon” there shall be substituted “ the Council shall forthwith” ”;
- (c) at the end of that section there shall be added the following subsections—
- “(3) Where a person who is both a solicitor and a notary public is suspended from practising as a solicitor under this Act the Council shall forthwith remove the person’s name from the register of notaries public.
- (4) If the suspension of such a person as is mentioned in subsection (3) is terminated or otherwise comes to an end the Council shall restore the person’s name to the register.”.

Commencement Information

II S. 37 wholly in force at 20.7.1992 see s. 75(2) and [S.I. 1992/1599, art.4, Sch. 2.](#)

38 Availability of legal aid in relation to services provided under this Act. **S**

After section 43 of the ^{M1}Legal Aid (Scotland) Act 1986 there shall be inserted the following section—

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“43A Application of Act to services provided under Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

- (1) Advice and assistance shall be available, in accordance with the provisions of this Act, in relation to the provision of executry services by executry practitioners and recognised financial institutions and conveyancing services by independent qualified conveyancers, all within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 as they are so available in relation to the provision of the like services by solicitors.
- (2) Subject to any act of sederunt or act of adjournal made under subsection (7) of section 26 of that Act (consideration of applications made under section 25) advice and assistance, civil legal aid and criminal legal aid shall be available, in accordance with the provisions of this Act, in relation to the provision of services by persons who have acquired rights to conduct litigation or, as the case may be, rights of audience by virtue of that section as they are so available in relation to the provision of the like services by solicitors and, where appropriate, by advocates.
- (3) Where advice and assistance, civil legal aid or criminal legal aid has been made available by virtue of this section, the provisions of this Act shall apply in relation to the person providing those services as they apply in relation to a solicitor or advocate providing like services.”.

Commencement Information

I2 S. 38 wholly in force on 30.09.1991 see s. 75(2) and s.I. 1991/2151, art. 3, Sch.

Marginal Citations

M1 1986 c. 47.

39 Removal of certain restrictions on the borrowing of the court process. **S**

Section 29 of the 1980 Act (which restricts the borrowing of the process relating to any court proceedings to solicitors having a place of business, in relation to the Court of Session, in Edinburgh, and, in relation to the inferior courts, within the jurisdiction of the court concerned) shall cease to have effect.

Commencement Information

I3 S. 39 wholly in force at 30.9.1991 see s. 75(2) and S.I. 1991/2151, art. 3, Sch.

40 Advisory and supervisory functions of the Director. **S**

- (1) Before—
 - (a) [^{F1}approving any rules made] under section 17(11) or 18(10) of this Act; or
 - (b) approving any rules—
 - ^{F2}(i)
 - (ii) such as are mentioned in section 31(1) or (2),

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- of this Act; or
- (c) considering any provisions of a draft scheme under section 26(1) or (3) of this Act,
- the Secretary of State shall first send a copy of the proposed regulations, rules or provisions to the Director.
- (2) The Director shall consider whether any such ^{F3}... rules or provisions as are mentioned in subsection (1) above 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) above.
- (5) The Director shall, so far as practicable, exclude from anything published under subsection (4) above any matter—
- (a) which relates to the affairs of a particular person; and
 - (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 by the Director under this section shall be absolutely privileged.

Textual Amendments

- F1** Words in s. 40(1)(a) substituted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 12\(14\)\(a\)\(i\)](#); S.S.I. 2003/384, art. 2(d)
- F2** S. 40(1)(b)(i) and the word immediately following it repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 12\(14\)\(a\)\(ii\)](#); S.S.I. 2003/384, art. 2(d)
- F3** Word in s. 40(2) repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 12\(14\)\(b\)](#); S.S.I. 2003/384, art. 2(d)

Commencement Information

- I4** S. 40 wholly in force at 30.9.1991 see s. 75(2) and [S.I. 1991/2151](#), art. 3, [Sch.](#)

41 Investigatory powers of the Director. **S**

- (1) For the purpose of investigating any matter under section 40 of this Act, 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 (within 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

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grounds of confidentiality between a client and his professional legal adviser in any civil proceedings.

^{F4}(3)

Textual Amendments

F4 S. 41(3) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 12\(2\)](#)

Commencement Information

I5 S. 41 wholly in force at 30.9.1991 see s. 75(2) and s.I. 1991/2151, art. 3, Sch.

[^{F5}41A Enforcement of notices under section 41 S

- (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 41(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 41(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.
- (7) In this section “the court” means the Court of Session.]

Textual Amendments

F5 Ss. 41A, 41B inserted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 12\(3\)](#)

[^{F5}41B Altering, etc. documents required to be produced under section 41 S

- (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 41(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;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

Textual Amendments

F5 Ss. 41A, 41B inserted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 12\(3\)](#)

42 Review of rules approved by the Secretary of State. **S**

- (1) Where the Secretary of State has approved—
- (a) a rule under section ^{F6}... 31(2) of this Act; or
 - (b) a draft scheme under section 26(6) of this Act,
- he may and, where the Lord President, in the case of a draft scheme such as is mentioned in paragraph (b), so requests shall, require the body which made the rule or, as the case may be, the scheme to review its terms.
- (2) When they have reviewed a rule or, as the case may be, a scheme, following a requirement made under subsection (1) above, the body concerned may revise the rule or scheme in the light of that review, and shall then submit the rule or scheme as revised or, if they have not revised it, as previously approved—
- (a) in the case of a rule such as is mentioned in subsection (1)(a) above, to the Secretary of State; or
 - (b) in the case of a draft scheme such as is mentioned in subsection (1)(b) above, to the Secretary of State and the Lord President.
- (3) Where a rule, whether revised or as previously approved, is submitted to the Secretary of State under subsection (2)(a) above, he may—
- (a) approve the rule as submitted to him; or
 - (b) amend the rule in such manner as he considers appropriate,
- and (except where the rule remains in the form previously approved) he may direct the body concerned to bring it into operation as soon as is practicable.
- (4) Where the Lord President and the Secretary of State are agreed that the terms of a draft scheme submitted to them under subsection (2)(b) above are satisfactory, the Secretary of State may—
- (a) approve the scheme; and
 - (b) (except where the scheme remains in the form previously approved) direct the body concerned to bring the scheme, as so amended, into force as soon as is practicable.
- (5) Where either the Secretary of State or the Lord President is of the view that the terms of any such scheme so submitted to them are not satisfactory, but they do not agree as to what the terms of the scheme should be, the scheme shall continue to have effect as previously approved.
- (6) Where the Secretary of State and the Lord President agree both that the terms of a scheme so submitted to them are not satisfactory, and as to what the terms of the scheme should be, the Secretary of State may amend the scheme in such manner as he and the Lord President consider appropriate; and may direct the body concerned to bring the scheme, as so amended, into force as soon as is practicable.

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- (7) The provisions of section 40(1)(b) and (c) of this Act shall apply to rules and schemes submitted under subsection (2) of this section as they apply to rules submitted under sections 17(15) and 31(2) and schemes submitted under section 25(1) of this Act.

Textual Amendments

- F6** Words in s. 42(1)(a) repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 12\(15\)](#); S.S.I. 2003/384, art. 2(d)

Commencement Information

- I6** S. 42 wholly in force at 30.9.1991 see s. 75(2) and [S.I. 1991/2151](#), art. 3, [Sch.](#)

43 Functions of Director in relation to certain rules made under the 1980 Act. **S**

After section 64 of the 1980 Act there shall be inserted the following sections—

“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
 - (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.

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;

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- (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.

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 (within 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 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.

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—

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- (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).”.

Commencement Information

I7 S. 43 wholly in force at 3.6.1991 see s. 75(2) and [S.I. 1991/1252, art. 3, Sch. 1](#)

44 Interpretation of Part II. **S**

In this Part of this Act, unless the context otherwise requires—

“advocate” means a member of the Faculty of Advocates practising as such;

“the Director” means the Director General of Fair Trading;

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

“solicitor” has the same meaning as in section 65(1) of the 1980 Act; and

“the 1980 Act” means the ^{M2}Solicitors (Scotland) Act 1980.

Commencement Information

I8 S. 44 wholly in force at 1.4.1991 see s. 75(2) and [S.I. 1991/822, art. 3, Sch.](#)

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M2 1980 c. 46.

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