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Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part II is up to date with all changes known to be in force on or before 11 July 2023. 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)

SCHEDULES

SCHEDULE 8

AMENDMENT OF ENACTMENTS

PART II

MISCELLANEOUS

VALID FROM 01/03/1997

The Probate and Legacy Duties Act 1808 (c. 149)

- 19 In section 38 of the Probate and Legacy Duties Act 1808 (executors to exhibit inventories of estate)—
- (a) for the words “oath or solemn affirmation” in both places where they occur there shall be substituted “ declaration ”; and
 - (b) the words from “(which oath” to “administer)” shall cease to have effect.

VALID FROM 01/03/1997

The Confirmation of Executors (Scotland) Act 1823 (c. 98)

- 20 (1) In section 3 of the Confirmation of Executors (Scotland) Act 1823 (which requires applications for confirmation to relate to the whole known moveable estate), for the word “oath” in both places where it occurs there shall be substituted “ declaration ”.
- (2) In section 4 of that Act (confirmation by executor’s creditor), for the word “oath” there shall be substituted “ declaration ”.

The Judicial Factors Act 1849 (c. 51)

- 21 (1) In section 5 (factor to lodge monies in one of the banks of Scotland) of the Judicial Factors Act 1849—
- (a) in subsection (1), for the words “banks in Scotland established by Act of Parliament or royal charter” there shall be substituted the words—

“following institutions, that is to say—

 - (a) an institution authorised under the Banking Act 1987;
 - (b) the National Savings Bank; or
 - (c) a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986;”;

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- (b) at the end of that section there shall be inserted the following subsection—
- “(4) In lodging money under subsection (1) above the judicial factor shall not require to have regard to any provision of the Trustee Investments Act 1961 which would, apart from the provisions of this subsection, require him to seek advice before depositing money in any of the institutions mentioned in that subsection.”.
- (2) In section 33 (power of accountant to require information) of that Act, for the word “bank”—
- (a) in the first place where it occurs, there shall be substituted the words “institution such as is mentioned in paragraphs (a) to (c) of section 5(1) of this Act”; and
- (b) in the second and third places where it occurs, there shall be inserted the word “institution”.
- (3) In section 34 (discharge of factors, tutors and curators) of that Act, at the beginning there shall be inserted the words “Subject to section 34A of this Act,”.
- (4) In section 37 (accumulation of principal and interest on accounts and deposits) of that Act—
- (a) for the words “bank in Scotland” there shall be substituted the words “institution such as is mentioned in paragraphs (a) to (c) of section 5(1) of this Act”; and
- (b) for the words “any bank” there shall be substituted the words “any such institution”.

VALID FROM 01/03/1997

The Confirmation of Executors (Scotland) Act 1858 (c. 56)

- 22 (1) In section 2 of the Confirmation of Executors (Scotland) Act 1858 (petition for confirmation to be subscribed by petitioner or his agent), at the end there shall be added “or by 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”.
- (2) In Schedules D and E to that Act (forms of confirmation), for the word “oath” there shall be substituted “declaration”.

Commencement Information

- II** Sch. 8 para. 22 partly in force; Sch. 8 not in force at Royal Assent see s. 75(2); para. 22(1) in force for certain purposes and para. 22(2) wholly in force at 1.3.1997 by S.I. 1996/2894, art. 3, Sch. (as amended by S.I. 1996/2966, art. 2)

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VALID FROM 01/04/1991

The Promissory Oaths Act 1868 (c. 72)

- 23 In the second part of the Schedule to the Promissory Oaths Act 1868 (officers required to take oath of allegiance and judicial oath), after the words “Judges of the Court of Session in Scotland” there shall be inserted the words “, temporary judges of the Court of Session and High Court of Justiciary appointed under section 35(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,”.

VALID FROM 01/03/1997

The Intestates Widows and Children (Scotland) Act 1875 (c. 41)

- 24 (1) In section 3 of the Intestates Widows and Children (Scotland) Act 1875 (commissary clerk to prepare inventory etc for widow or children where deceased’s estate small)—
- (a) for the word “oath” in the first place where it occurs there shall be substituted “ declaration ”; and
 - (b) for the words “shall take the oath of the applicant thereto” there shall be substituted “ on the inventory and declaration being signed by the applicant ”.
- (2) In Schedule A to that Act (form of inventory etc)—
- (a) for the word “oath” in both places where it occurs there shall be substituted “ declaration ”;
 - (b) for the words from “in presence of” to “depones” there shall be substituted “ [name and address of applicant] (hereinafter referred to “the applicant”) hereby declares ”;
 - (c) for the words “deponent” wherever it occurs and “deponent’s” there shall be substituted respectively “ applicant ” and “ applicant’s ”; and
 - (d) the words from “All which” to the end shall cease to have effect.
- (3) In Schedule B to that Act (form of confirmation)—
- (a) for the word “oath” in both places where it occurs there shall be substituted “ declaration ”; and
 - (b) for the word “deponed” there shall be substituted “ declared ”.

VALID FROM 01/03/1997

The Small Testate Estates (Scotland) Act 1876 (c. 24)

- 25 (1) In section 3 of the Small Testate Estates (Scotland) Act 1876 (simplified procedure for confirmation to small estates)—
- (a) for the word “oath” there shall be substituted “ declaration ”; and

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(b) for the words “being duly sworn to” there shall be substituted “ and declaration being duly signed ”.

(2) In Schedule A to that Act (form of inventory etc)—

(a) for the word “oath” in both places where it occurs there shall be substituted “ declaration ”;

(b) for the words from “In presence of” to “depones” there shall be substituted “ [name and address of applicant] (hereinafter referred to “the applicant”) hereby declares ”;

(c) for the word “deponent” wherever it occurs there shall be substituted “ applicant ”; and

(d) the words from “All which” to the end shall cease to have effect.

(3) In Schedule B to that Act (form of confirmation), for the word “oath” there shall be substituted “ declaration ”.

The Sheriff Courts (Scotland) Act 1971 (c.58)

26 (1) For subsection (1) of section 33 (Sheriff Court Rules Council) of the Sheriff Courts (Scotland) Act 1971 there shall be substituted the following subsection—

“(1) There shall be established a body (to be known as the Sheriff Court Rules Council, and hereafter in this section and section 34 called “the Council”) which shall have the functions conferred on it by section 34, and which shall consist of—

(a) two sheriffs principal, three sheriffs, one advocate, five solicitors and two whole-time sheriff clerks, all appointed by the Lord President of the Court of Session, after consultation with such persons as appear to him to be appropriate;

(b) two persons appointed by the Lord President after consultation with the Secretary of State, being persons appearing to the Lord President to have—

(i) a knowledge of the working procedures and practices of the civil courts;

(ii) a knowledge of consumer affairs; and

(iii) an awareness of the interests of litigants in the civil courts; and

(c) one person appointed by the Secretary of State, being a person appearing to the Secretary of State to be qualified for such appointment.”

(2) In subsection (3) of that section, for the words “consultation with such persons as may appear to him appropriate” there shall be substituted the words “ such consultation as is mentioned in paragraph (a) or, as the case may be, (b) of subsection (1) above ”.

The Criminal Procedure (Scotland) Act 1975 (c. 21)

27 (1) The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.

(2) After section 282 there shall be inserted the following sections—

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“282A Right of audience of solicitor before the High Court.

Without prejudice to section 250 of this Act, any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980 a right of audience in relation to the High Court of Justiciary shall have the same right of audience in that court as is enjoyed by an advocate.

282B Further provision as to rights of audience.

Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the High Court of Justiciary as may be specified in an Act of Adjournal made under subsection (7)(b) of that section.”.

- (3) In subsection (1)(b) of section 407 (imprisonment for non-payment of fine), at the end there shall be inserted “either with immediate effect or to take effect in the event of the person failing to pay the fine or any part or instalment of it by such further time as the court may order”.

VALID FROM 01/04/1991

The Community Service by Offenders (Scotland) Act 1978 (c. 49)

28

In section 4 of the Community Service by Offenders (Scotland) Act 1978 (which, amongst other things, gives the court powers to deal with failure to comply with community service orders) there shall be added at the end the following subsection—

“(3) The evidence of one witness shall, for the purposes of subsection (2) above, be sufficient evidence.”.

The Solicitors (Scotland) Act 1980 (c. 46)

- 29 (1) The Solicitors (Scotland) Act 1980 shall be amended as follows.
- (2) In section 9 (removal of name from roll on request)—
- (a) after the words “his name” there shall be inserted the words “, or any annotation made against his name under section 25A(3),”; and
 - (b) after the words “that solicitor” there shall be inserted the words “or, as the case may be, the annotation against his name,”.
- (3) In section 10 (restoration of name to roll on request), in subsection (1A)—
- (a) after the words “whose name” there shall be inserted the words “, or any annotation against whose name,”; and
 - (b) after the words “that solicitor” there shall be inserted the words “or, as the case may be, the annotation,”.
- (4) In section 20 (duty of Council to supply lists)—

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- (a) in subsection (1), after paragraph (a) there shall be inserted the following paragraph—
 - “(ab) to the Principal Clerk of Session;”;
 - (b) for subsection (2) there shall be substituted the following subsection—
 - “(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.”.
- (5) In section 26 of the 1980 Act (offence for solicitors to act as agents for unqualified persons)—
- (a) in subsection (1)(c), at the beginning there shall be inserted “subject to subsection (4),”;
 - (b) in subsection (1)(d), at the beginning there shall be inserted “subject to subsection (4),”;
 - (c) in subsection (2), at the end there shall be inserted “or employed by a law centre.”; and
 - (d) after subsection (3) there shall be inserted—
 - “(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.”
- (6) In section 32 (which makes it an offence for unqualified persons to prepare writs and papers relating to certain matters)—
- (a) in subsection (2)(a), after the words “fee, gain or reward” there shall be inserted the words “(other than by way of remuneration paid under a contract of employment)”;
 - (b) after subsection (2) there shall be inserted the following subsections—

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“(2A) Subsection (1)(a)

shall not apply to a qualified conveyancer 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 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.”

(7) At the end of section 33 (unqualified person not entitled to fees etc.) there shall be inserted the words “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 ^{M1}Sheriff Courts (Scotland) Act 1971, permitted to represent a party to a summary cause.”

(8) In section 42A (powers of Council where inadequate professional services alleged), at the end of subsection (2) there shall be inserted the following paragraph—

“(d) to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Council may specify.”

(9) In section 51(3) (complaints to Scottish Solicitors Discipline Tribunal)—

(a) after paragraph (b) there shall be inserted—

“(ba) the Dean of the Faculty of Advocates;”;

(b) for paragraph (f) there shall be substituted—

“(f) the Scottish legal services ombudsman.”

(10) In section 53 (powers of Tribunal)—

(a) after subsection (2)(b) there shall be inserted the following paragraph—

“(ba) order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;”;

(b) in subsection (2)(c), for the words “£4,000” there shall be substituted the words “£10,000”;

(c) after subsection (3A) there shall be inserted the following subsection—

“(3B) The power conferred by subsection (2)(ba)

may be exercised by the Tribunal either independently of, or in conjunction with, any other power conferred by that subsection.”;

and

(d) in subsection (6), after the words “as a solicitor” there shall be inserted the words “or that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked”.

(11) In section 53A (inadequate professional services: powers of Tribunal),

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- (a) after subsection (2)(b) there shall be inserted the following paragraph—
 - “(ba) to order that any right of audience held by the solicitor by virtue of section 25A be suspended or revoked;” and
 - (b) after subsection (2)(c) there shall be inserted the following paragraph—
 - “(d) to direct the solicitor to pay to the client by way of compensation such sum, not exceeding £1,000, as the Tribunal may specify.”
- (12) In section 55 (powers of court)—
- (a) after subsection (1)(b) there shall be inserted the following paragraphs—
 - “(ba) suspend the solicitor from exercising any right of audience held by him by virtue of section 25A for such period as the court may determine; or
 - (bb) revoke any right of audience so acquired by him; or” and
 - (b) after subsection (3) there shall be inserted the following subsection—
 - “(3A) A solicitor whose rights of audience under section 25A have been revoked in pursuance of an order made by the court under subsection (1) may apply to the court for an order restoring those rights, and the court may make such order.”
- (13) After section 56 there shall be inserted the following section—
- “56A Further provision as to compensation awards.**
- (1) The taking of any steps under section 42A(2) or 53A(2) shall not be founded upon in any proceedings for the purpose of showing that the solicitor in respect of whom the steps were taken was negligent.
 - (2) A direction under section 42A(2)(d) or 53A(2)(d) to a solicitor to pay compensation to a client shall not prejudice any right of that client to take proceedings against that solicitor for damages in respect of any loss which he alleges he has suffered as a result of that solicitor’s negligence, and any sum directed to be paid to that client under either of those provisions may be taken into account in the computation of any award of damages made to him in any such proceedings.
 - (3) The Secretary of State may by order made by statutory instrument amend subsection (2)(d) of sections 42A and 53A by substituting for the sum for the time being specified in those provisions such other sum as he considers appropriate.
 - (4) Before making any such order the Secretary of State shall consult the Council.
 - (5) An order made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (14) In section 63 (penalties and time limit for prosecution of offences)—
- (a) in subsection (1)—
 - (i) for the words “level 3” there shall be substituted the words “level 4”; and
 - (ii) the words from “and to imprisonment” to the end shall cease to have effect; and

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(b) after subsection (2) there shall be inserted the following subsections—

“(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.”

(15) In subsection (1) of section 65 (interpretation)—

(a) after the definition of “the court” there shall be inserted—

““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;”;

(b) after the definition of “judge” there shall be inserted—

““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;”;

(c) after the definition of “Lord President” there shall be inserted—

““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

(b) a body corporate whose members include registered foreign lawyers, and membership of which is restricted to solicitors,

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incorporated practices, registered foreign lawyers and other multi-national practices;”;

(d) after the definition of “property” there shall be inserted—

““registered foreign lawyer” means a foreign lawyer who is registered under section 60A;”

(e) after the definition of “the Society” there shall be inserted—

““Scottish legal services ombudsman” means the ombudsman appointed under section 34 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;” and

(f) in the definition of “unqualified person”, after the word “person” there shall be inserted “, other than a multi-disciplinary practice,”.

(16) In Schedule 1 (The Law Society of Scotland), after paragraph 11 there shall be inserted—

Exemption from liability for damages

“11A Neither the Society nor any of its officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of its functions unless the act or omission is shown to have been in bad faith.”

(17) In Schedule 4 (constitution, procedure and powers of Tribunal)—

(a) in paragraph 1—

(i) in sub-paragraph (a), at the end there shall be inserted the words “appointed by the Lord President;”

(ii) in sub-paragraph (b), for the word “4” there shall be substituted the word “8”;

(iii) at the end of sub-paragraph (b) there shall be inserted the words “appointed by the Lord President after consultation with the Secretary of State.”; and

(iv) the words “appointed by the Lord President”, where they appear at the end of that paragraph, shall cease to have effect;

(b) in paragraph 2—

(i) after the words “Lord President” there shall be inserted the words “after consultation with the Secretary of State”; and

(ii) for the words “so re-appointed” there shall be substituted the words “re-appointed by the Lord President”;

(c) in paragraph 3, after the words “as the case may be,” there shall be inserted the words “after consultation with the Secretary of State,”;

(d) in paragraph 14, for the words from “may be published” to the end there shall be substituted the words “shall, subject to paragraph 14A, be published in full”;

(e) after paragraph 14 there shall be inserted the following paragraph—

“14A In carrying out their duty under paragraph 14, the Tribunal may refrain from publishing any names, places or other facts the publication of which would, in their opinion, damage, or be likely to damage, the interests of persons other than—

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- (a) the solicitor against whom the complaint was made; or
 - (b) his partners; or
 - (c) his or their families,
- but where they so refrain they shall publish their reasons for so doing.”;
- (f) in paragraph 17—
 - (i) the words from “also” to “before the order” shall cease to have effect;
 - (ii) after the words “and shall” there shall be inserted the words “, without prejudice to paragraph 14,”; and
 - (iii) the words from “and in such other manner” to the end shall cease to have effect; and
 - (g) after paragraph 18 there shall be inserted the following paragraph—

“18A Without prejudice to paragraph 18, the Council shall ensure that a copy of every decision published under paragraph 14 is open for inspection at the office of the Society during office hours by any person without payment of any fee.”.

Marginal Citations

M1 1971 c. 58.

VALID FROM 20/07/1992

The Criminal Justice (Scotland) Act 1980 (c. 62)

- 30 (1) For section 76 of the Criminal Justice (Scotland) Act 1980 (presumption as to the contents of containers) there shall be substituted the following section—

“76 Presumption as to contents of container.

Section 127 of the Licensing (Scotland) Act 1976 shall apply for the purposes of any trial in connection with an alleged contravention of any provision of this Part of this Act as it applies for the purposes of any trial in connection with an alleged contravention of any provision of that Act.”

- (2) Nothing in this paragraph shall apply to the prosecution of any person for an offence committed before the commencement of this paragraph.

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)

- 31 (1) In section 6(3)(e) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (occupancy rights after dealing with third parties)—
- (a) the words “, at or before the time of the dealing,” shall cease to have effect; and
 - (b) in sub-paragraph (i)—

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(i) after the word “not” there shall be inserted “ or were not at the time of the dealing ”; and

(ii) after the word “has” there shall be inserted “ or had ”.

(2) In section 8 of that Act (interests of heritable creditors)—

(a) in subsection (2), the words “before the granting of the loan” shall cease to have effect; and

(b) in subsection (2A)—

(i) the words “at or before the granting of the security” shall cease to have effect;

(ii) after the word “not” in paragraph (a) there shall be inserted “ or were not at the time of the granting of the security ”; and

(iii) after the word “has” in paragraph (a) there shall be inserted “ or had ”.

The Representation of the People Act 1983 (c. 2)

32 Section 42(3)(b) of the Representation of the People Act 1983 (nomination paper in local election to contain statement of acceptance of office) shall cease to have effect.

The Companies Act 1985 (c. 6)

33 (1) The Companies Act 1985 shall be amended as follows.

(2) In section 38(1) (appointment of attorney to execute deeds abroad), the words “under the law of England and Wales” shall cease to have effect.

(3) In section 39(3) (official seal for use abroad), the words “or, in the case of a company registered in Scotland, subscribed in accordance with section 36B,” shall cease to have effect.

(4) In section 186 (share certificate to be evidence of title), the words “(or, in the case of a company registered in Scotland, subscribed in accordance with section 36B)” shall cease to have effect.

(5) In section 188(2) (issue and effect of share warrant to bearer), the words “(or, in the case of a company registered in Scotland, subscribed in accordance with section 36B)” shall cease to have effect.

(6) Subsection (2) of section 462 (power of company to create floating charges under Scots law) shall cease to have effect.

The Family Law (Scotland) Act 1985 (c.37)

34 In section 8(1) of the Family Law (Scotland) Act 1985 (orders for financial provision on divorce etc)—

(a) in paragraph (a), the words “or the transfer of property” shall cease to have effect; and

(b) at the end of paragraph (a) there shall be inserted the following paragraph—

“(aa) an order for the transfer of property to him by the other party to the marriage;”.

Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Part II is up to date with all changes known to be in force on or before 11 July 2023. 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)

The Insolvency Act 1986 (c. 45)

- 35 Section 53(3) of the Insolvency Act 1986 (execution of instrument appointing receiver) shall cease to have effect.

VALID FROM 26/08/1991

The Legal Aid (Scotland) Act 1986 (c. 47)

- 36 (1) In subsection (3) of section 4 (Scottish Legal Aid Fund) of the Legal Aid (Scotland) Act 1986—
- (a) paragraph (a) shall cease to have effect; and
 - (b) in paragraph (c), after the word “property” there shall be inserted “ (including money) ”.
- (2) In subsection (1) of section 6 (definitions) of that Act, for the words “if and so far as may be necessary”, in both places where they occur, there shall be substituted the words “ where appropriate ”.
- (3) In subsection (2) of section 13 (meaning of “civil legal aid”) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.
- (4) In subsection (3) of section 14 (availability of civil legal aid) of that Act, at the beginning there shall be inserted the words “ Subject to subsections (4) to (6) below, ”.
- (5) After the said subsection (3) there shall be inserted the following subsections—
- “(4) Where—
- (a) the Board has refused an application for civil legal aid by a person who has applied for such aid for the purpose of raising an action against the Board; and
 - (b) the applicant has applied to the Board for a review of his application,
- the Board shall, unless they decide to grant the application forthwith, refer the application, together with all relevant precognitions, statements and other papers, including any observations they wish to make on the application, to the sheriff for Lothian and Borders at Edinburgh.
- (5) Subject to section 15 of this Act, and to subsection (2) above, where the sheriff decides—
- (a) that the applicant has *aprobabilis causa litigandi*; and
 - (b) that it is reasonable in the particular circumstances of the case that he should receive legal aid,
- he shall so inform the Board, and the Board shall make civil legal aid available to the applicant.
- (6) A decision made by the sheriff under subsection (5) above shall be final.”
- (6) After subsection (2) of section 17 (contributions and payments out of property received) of that Act, there shall be inserted the following subsections—

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“(2A) Except in so far as regulations made under this section otherwise provide, any sum of money recovered under an award of or an agreement as to expenses in favour of any party in any proceedings in respect of which he is or has been in receipt of civil legal aid shall be paid to the Board.

(2B) Except in so far as regulations made under this section otherwise provide, where, in any proceedings, there is a net liability of the Fund on the account of any party, the amount of that liability shall be paid to the Board by that party, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him—

- (a) in the proceedings; or
- (b) under any settlement to avoid them or to bring them to an end.”.

(7) Subsections (3) to (5) of that section shall cease to have effect.

(8) In subsection (6) of that section, for the words “subsection (5)” there shall be substituted the words “ subsection (2A) or (2B) ”.

(9) In subsection (8) of that section, for the words from “subsection” to the end there shall be substituted the words “ subsection (1) above and in section 33 of this Act to “fees and outlays” include references to sums which would have been payable to that solicitor if he had been so employed. ”

(10) In subsection (4) of section 21 (scope and nature of criminal legal aid) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.

(11) In subsection (8) of section 29 (legal aid in certain proceedings relating to children) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.

(12) In subsection (4) of section 30 (legal aid in contempt proceedings) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.

(13) In subsection (1) of section 31 (solicitors and counsel) of that Act, for the words “his counsel” there shall be substituted the words “ or a solicitor holding rights of audience by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, his counsel or such a solicitor ”.

(14) In subsection (9)(b) of the said section 31, at the beginning there shall be inserted “ Subject to subsection (11) below, ”.

(15) At the end of the said section 31 there shall be inserted the following subsection—

“(11) Nothing in subsection (9)(b) above shall enable the Secretary of State to make regulations authorising the granting of legal aid only to solicitors holding rights of audience under section 25A (rights of audience) of the Solicitors (Scotland) Act 1980.”.

(16) In subsection (3) of section 33 (fees and outlays of counsel and solicitors) of that Act—

- (a) in paragraph (c) the words “and taxation” and “or taxation”; and
 - (b) in paragraph (d) the word “ , taxation”,
- shall cease to have effect.

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Commencement Information

- I2** Sch. 8 para. 36 partly in force; para. 36 not in force at Royal Assent see s. 75(2); para. 36(6) in force at 26.08.1991 by S.I. 1991/1903, art. 3, Sch.; para. 36(2)-(5)(10)-(15) in force at 30.9.1991 by S.I. 1991/2151, art 3, Sch.

The Criminal Justice (Scotland) Act 1987 (c. 41)

- 37 In section 6(1) of the Criminal Justice (Scotland) Act 1987 (definition of implicative gifts), for the words “mentioned in section 5(2) of this Act” there shall be substituted “on which, in respect of a person suspected of, or charged with, an offence to which section 1 of this Act relates, the warrant to arrest and commit was granted, or a restraint order was made (whichever first occurs).”

VALID FROM 03/06/1991

The Court of Session Act 1988 (c. 36)

- 38 For section 48 (limited right of audience of solicitor before the court) of the Court of Session Act 1988 there shall be substituted the following sections—

“48 Right of audience of solicitor before the court.

- (1) Any solicitor who has, by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980 a right of audience in relation to the Court of Session shall have the same right of audience in that court as is enjoyed by an advocate.
- (2) Any solicitor shall have a right of audience—
 - (a) before the vacation judge; and
 - (b) in such other circumstances as may be prescribed.

48A Further provision as to rights of audience.

Any person who has complied with the terms of a scheme approved under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (consideration of applications made under section 25) shall have such rights of audience before the court as may be specified in an act of sederunt made under subsection (7)(a) of that section.”

The Antarctic Minerals Act 1989 (c. 21)

- 39 In subsection (2) of section 7 of the Antarctic Minerals Act 1989 (which relates to the Secretary of State’s power to give directions), for the words “section 91 of the Court of Session Act 1868” there shall be substituted the words “section 45 of the Court of Session Act 1988”.

Status:

Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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