
STATUTORY INSTRUMENTS

1997 No. 317 (S.21)

LEGAL SERVICES

The Executry Practitioners (Scotland) Regulations 1997

Made - - - - - *10th February 1997*

Coming into force - - - - - *1st March 1997*

The Secretary of State, in exercise of the powers conferred on him by section 18(10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁾ and of all other powers enabling him in that behalf, and after sending a copy of the proposed Regulations to the Director General of Fair Trading and considering any advice given by the Director in accordance with section 40 of that Act and after consulting such persons as the Secretary of State considers appropriate, hereby makes the following Regulations, a draft of which has been laid before, and approved by a resolution of, each House of Parliament:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Executry Practitioners (Scotland) Regulations 1997 and shall come into force on 1st March 1997.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;

“adequate professional services” means professional services of a quality which could reasonably be expected of a competent executry practitioner;

“associate”, in relation to an executry practitioner, means—

- (a) a person who is related to that executry practitioner as mentioned in paragraph (2);
- (b) a person who is a partner or employee of that executry practitioner; or

(1) 1990 c. 40.

- (c) a person who is a director, member or employee of the same company or group of companies in which that executry practitioner is also a director, member or employee;
- “Bank” means an institution authorised under the Banking Act 1987⁽²⁾ and shall include a European deposit taker as defined in regulation 82(3) of The Banking Coordination (Second Council Directive) Regulations 1992⁽³⁾;
- “the Board” means the Scottish Conveyancing and Executry Services Board;
- “Building Society” has the same meaning as in section 119(1) of the Building Societies Act 1986⁽⁴⁾;
- “client” includes a prospective client and, where the client is acting as an executor on the estate of a deceased person or as a trustee, includes the client acting in that capacity;
- “clients' money” means all money held or received by an executry practitioner on account of a client for whom that executry practitioner is providing, or has provided, executry services whether the money is held by that executry practitioner as agent, trustee or in any other capacity;
- “conveyancing services” have the same meaning as in section 23 of the Act;
- “executry practitioner” has the same meaning as in section 23 of the Act;
- “executry services” have the same meaning as in section 23 of the Act;
- “group of companies” means a holding company and its subsidiaries within the meaning of section 736 of the Companies Act 1985⁽⁵⁾;
- “inadequate professional services” have the same meaning as in section 23 of the Act;
- “independent qualified conveyancer” has the same meaning as in section 23 of the Act;
- “qualified person” means a person qualified to practice as a solicitor under section 4 of the Solicitors (Scotland) Act 1980⁽⁶⁾ or an executry practitioner;
- “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⁽⁷⁾;
 - (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⁽⁸⁾;
 - (c) a body authorised to carry on insurance business under section 3 or 4 of the Insurance Companies Act 1982⁽⁹⁾; 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;
- “related” shall be construed in accordance with paragraph (2);
- “solicitor” has the same meaning as in section 65(1) of the Solicitors (Scotland) Act 1980⁽¹⁰⁾;
- “specified services” means any services within the following descriptions of services—

(2) 1987 c. 22.

(3) S.I.1992/3218.

(4) 1986 c. 53.

(5) 1985 c. 6; section 736 was substituted by the Companies Act 1989 (c. 40), section 144.

(6) 1980 c. 46.

(7) 1987 c. 22.

(8) 1986 c. 53; section 9 was amended and repealed in part by S.I. 1992/3218.

(9) 1982 c. 50.

(10) 1980 c. 46.

- (a) services relating to the acquisition, disposal, valuation or surveying of property or to any estate agency work to which the Estate Agents Act 1979(11) applies;
- (b) services relating to the provision of mortgage finance;
- (c) services relating to banking, investment, insurance or other financial services;
- (d) services related to the drawing up of a will, trust disposition and settlement or other testamentary document;
- (e) funeral services;
- (f) removal services;
- (g) conveyancing services;
- (h) taxation advisory services; and
- (i) services relating to arranging the provision of any of the services in this definition;

but shall not include any valuation or surveying services provided solely or primarily for the purposes of a person considering providing mortgage finance on the security of the property to be valued or surveyed;

“terms of engagement letter” has the same meaning as in regulation 12;

and other expressions used in these Regulations which are defined in section 23 of the Act shall have the same meaning in these Regulations as they have in that section.

(2) A party (“the first party”) is related to another party (“the second party”) if the first party is—

- (a) the second party’s spouse;
- (b) the second party’s brother, sister, ancestor or descendent;
- (c) the second party’s spouse’s brother, sister, ancestor or descendent; or
- (d) the spouse of any person who, by virtue of sub-paragraphs (b) or (c) above is a relative of the second party.

(3) For the purposes of paragraph (2)—

“ancestor” means a parent or a parent’s parent;

“brother” includes a half-brother and a step-brother;

“descendant” means a child or a child’s child;

“relative” includes a relative by adoption;

“sister” includes a half-sister and a step-sister;

“spouse” includes a former spouse, and a person living with another as that person’s husband or wife.

(4) For the purposes of paragraph (3)—

“child” includes a step-child; and

“parent” includes a step-parent.

(5) Unless the context otherwise requires, any reference in these Regulations to—

- (a) a numbered section is to the section bearing that number in the Act;
- (b) to a numbered regulation is to the regulation bearing that number in these Regulations; and
- (c) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

PART II

GENERAL STANDARDS OF CONDUCT

General Principles

3. In providing executry services to a client, an executry practitioner shall at all times—
- (a) observe the law; and
 - (b) ensure that he does not impair his independence in any way,
- and, subject to those general duties,
- (c) provide adequate professional services;
 - (d) act in the best interests of his client;
 - (e) carry out his client’s instructions with the care and skill necessary to the matter in hand; and
 - (f) advise his client when his client’s instructions are in respect of matters outwith his knowledge or professional competence or when he is unable to provide adequate professional services or when his client should consider instructing another independent qualified person.

Confidentiality

4.—(1) An executry practitioner shall treat any communication made to or by him in the course of his acting as such for a client as confidential in like manner as if he had at all material times been a solicitor acting for the client.

(2) Paragraph (1) shall not prevent an executry practitioner from disclosing any such communication to a qualified person (“the relevant qualified person”) who is directing, supervising or carrying out the executry services (or who may direct, supervise or carry out such services) for the client to whom the communication relates, insofar as the communication is relevant to the executry services being provided.

(3) An executry practitioner shall take all reasonable steps to ensure that the relevant qualified person is also required to comply with the obligation specified in paragraph (1), except that the relevant qualified person may disclose to the executry practitioner any communication which is relevant to the executry services being provided.

(4) The obligations referred to in paragraphs (1) and (3) shall not apply to any communication the disclosure of which has been agreed to in writing by the client.

Fees

5. An executry practitioner shall ensure that the fees he charges for the executry services provided for a client are fair and reasonable, having regard to:—

- (a) the nature of the work done;
- (b) the skill and time necessary to complete the work;
- (c) the degree of urgency required by the client;
- (d) the amount and value of the executry estate concerned; and
- (e) any specialised or unusual knowledge required.

Tying-in

6.—(1) An executry practitioner shall not refuse to accept instructions to provide a client with executry services on the ground that the client has declined to instruct that executry practitioner or an associate to provide any of the specified services.

(2) Where an executry practitioner provides any of the specified services in addition to executry services, any material published by that executry practitioner for the purpose of advertising the executry services shall make it clear that the executry services may be provided to a client by that executry practitioner whether or not that executry practitioner also provides the client with any of the specified services.

(3) Before an executry practitioner accepts instructions from a client to provide executry services, he shall ascertain—

- (a) whether the client has been offered any of the specified services by an associate or by any other person; and, if so,
- (b) whether the client has been offered those services on the express condition that he uses the executry practitioner for the provision of executry services,

and the executry practitioner shall not knowingly act for such a client.

Independent financial advice

7. An executry practitioner shall, before he accepts instructions from a client to provide executry services, advise the client in the terms of engagement letter of his right to obtain independent financial advice in connection with the provision of those services or with any transaction to which those services relate and shall take no action to prevent the client obtaining such advice.

Duty to colleagues

8.—(1) An executry practitioner shall at all times not knowingly mislead other executry practitioners, solicitors, independent qualified conveyancers or recognised financial institutions (“his colleagues”) or break any undertaking which he has given to his colleagues and shall act with his colleagues in a manner consistent with persons having mutual trust and confidence in each other.

(2) Where an executry practitioner authorised by and acting for a client employs or instructs another executry practitioner or a solicitor or an independent qualified conveyancer or a recognised financial institution, he shall (whether or not he discloses the client) be liable to that other person for that person’s fees and outlays unless, at the time of the employment or instruction, he expressly disclaims any such liability.

PART III

CONFLICTS OF INTEREST

Actual and potential conflicts between client and executry practitioner

9. Where an executry practitioner (whether before or after accepting instructions to provide a client with executry services) knows, or ought reasonably to know, of circumstances that result, or may result, in a conflict between the interests of that client and the executry practitioner or an associate, the executry practitioner shall not act or, as the case may be, shall cease to act for that client.

Actual conflicts between clients

10.—(1) Subject to paragraphs (2) and (3), where an executry practitioner (whether before or after accepting instructions to provide a client with executry services) knows, or ought reasonably to know, of circumstances that result in an actual conflict between the interests of that client and any other person who is a client either of the executry practitioner or of an associate, the executry practitioner shall not act or, as the case may be, shall cease to act for that client or those clients.

(2) For the avoidance of doubt, the circumstances in paragraph (1) that result in an actual conflict of interests include any circumstances whereby the executry practitioner is providing executry services for one party to a transaction and that executry practitioner or an associate of that executry practitioner is providing (or arranging to provide) executry services or any specified services for another party to that transaction.

(3) Where there is an actual conflict of interests between two or more clients of the executry practitioner and he would otherwise require not to act or to cease to act for them in pursuance of paragraph (1), he may act or continue to act for one of them (“the chosen client”) if—

- (a) he considers that it would be in the best interests of the chosen client that he act or continue to act for him;
- (b) he notifies all of those clients in writing—
 - (i) of the circumstances that result in an actual conflict between the interests of those clients; and
 - (ii) that the provisions of paragraph (1) would require him not to act or, as the case may be, to cease to act for those clients but he considers that it would be in the best interests of the chosen client that he act or continue to act for him;
- (c) the client or clients for whom the executry practitioner is already acting agrees or agree with him in writing that, notwithstanding the provisions of paragraph (1), the executry practitioner may act or continue to act for the chosen client.

Potential conflicts of interest between clients

11.—(1) Subject to paragraph (2), where an executry practitioner (whether before or after accepting instructions to provide a client with executry services) knows, or ought reasonably to know, of circumstances that may result in an actual conflict between the interests of that client and any other person who is a client either of the executry practitioner or of an associate, the executry practitioner shall not act or, as the case may be, shall cease to act for that client or those clients.

(2) Where an executry practitioner would otherwise require not to act or to cease to act for a client or clients of his in pursuance of paragraph (1), he may act or continue to act for that client or those clients (“the chosen client or clients”) if—

- (a) he considers that it would be in the best interests of that client or those clients that he act or continue to act for him or them;
- (b) he notifies all of those clients in writing—
 - (i) of the circumstances that may result in an actual conflict between the interests of the chosen client or clients and any other person who is either a client of the executry practitioner or of an associate; and
 - (ii) that the provisions of paragraph (1) would require him not to act or, as the case may be, to cease to act for those clients but he considers that it would be in the best interests of the chosen client or clients that he act or continue to act for him or them;
- (c) the client or clients for whom the executry practitioner is already acting agrees or agree with him in writing that, notwithstanding the provisions of paragraph (1), the executry practitioner may act or continue to act for the chosen client or clients.

PART IV

CONDUCT OF EXECUTRY SERVICES

Terms of engagement letter, etc

12.—(1) An executry practitioner shall, before accepting instructions from a client to provide executry services, provide the client with a letter (“the terms of engagement letter”) which informs the client of the terms upon which he will provide executry services for that client, including information relating to the following matters, namely:—

- (a) the total price payable by the client for the provision of the executry services, together with details of the elements included in that total price, including—
 - (i) the fees to be charged by the executry practitioner;
 - (ii) any expenses or outlays to be met; and
 - (iii) any value added tax or other tax which is likely to be charged;or, where the total price is not ascertainable at the relevant time, of the manner in which the total price will be calculated;
- (b) whether any of the elements included in the total price is variable and, if so, in what circumstances and of the amount of the variation or, if this is not ascertainable at the relevant time, of the manner in which the amount of the variation will be calculated;
- (c) when the whole or any part of the total price or any variation thereof will be required to be paid;
- (d) the nature of the executry services which the executry practitioner will provide and the length of time that it is likely to take to carry out those services;
- (e) the name of the person who will be providing the executry services;
- (f) the steps that will be taken to keep the client informed of progress;
- (g) the right of the client to obtain independent financial advice in connection with the provision of executry services or with the transaction to which those services relate;
- (h) the right of the client at any time to require the executry practitioner to cease to provide him with executry services (including, in particular, where there is any variation of the price in terms of sub-paragraph (b) above) and the terms upon which the client may do so;
- (i) the circumstances in which the executry practitioner may refuse to provide (or cease continuing to provide) the executry services in terms of regulation 20 and as to what happens when he does so;
- (j) the procedures established and maintained by the executry practitioner under regulation 35 for dealing with any complaints made to him in connection with the provision of executry services; and
- (k) the client may make any complaint to the Board in connection with the provision of executry services by the executry practitioner including any such complaint where he considers that the executry practitioner—
 - (i) is guilty of professional misconduct; or
 - (ii) has provided inadequate professional services; or
 - (iii) has failed to comply with these Regulations; or
 - (iv) has been convicted of a criminal offence rendering him no longer a fit and proper person to provide executry services as an executry practitioner.

(2) Where an executry practitioner may also provide a client not only with executry services but also with any of the specified services, he shall, before accepting instructions from the client to provide any of those services, inform the client in writing (whether or not in the terms of engagement letter) not only of the matters required by paragraph (1) but also—

- (a) that the executry practitioner is willing to provide the executry services both with and without any of the specified services;
- (b) of the price payable by the client for the provision of executry services alone;
- (c) of the price payable by the client for the provision of each of the specified services required by the client if the executry services were not also to be provided; and
- (d) of the total price payable by the client for any combination of the services required.

(3) In this regulation, the price payable for the provision of any of the specified services means—

- (a) if the amount is known and is fixed, the amount payable for that service;
- (b) if the amount is known but is liable to vary, that amount and the circumstances in which it may vary;
- (c) if the amount is not known, the manner in which it will be calculated or the factors which will be relied on in making the calculation;
- (d) if there is more than one payment payable for that service—
 - (i) the number of payments payable for that service; or
 - (ii) if the payments are periodical, the frequency of such payments and any circumstances in which it may be varied.

Qualified person

13.—(1) The executry services provided by an executry practitioner for a client shall be carried out by or under the supervision of the executry practitioner or of a qualified person nominated for that purpose by the executry practitioner.

(2) The executry practitioner shall ensure—

- (a) that the nominated qualified person is identified to the client; and
- (b) that, so far as is reasonably practicable, the nominated qualified person is regularly available for consultation by the client at his office during normal business hours.

(3) A nominated qualified person (“the existing nominated qualified person”) may be replaced by another nominated qualified person, either permanently or for a temporary period, only—

- (a) upon the reasonable request of the executry practitioner, the existing nominated qualified person or the client; or
- (b) if it is not reasonably practicable for the existing nominated qualified person to act or continue to act in providing the executry services, either permanently or for temporary periods due to sickness or leave or otherwise;

and, where the existing nominated qualified person is so replaced, the executry practitioner shall ensure that the client is notified of that fact and of whether the replacement is permanent or temporary and, if temporary, for how long and of the name of the replacement.

Information to clients

14. An executry practitioner providing executry services for a client shall establish and maintain suitable procedures to ensure that the client is kept informed of the progress of those services and shall take such steps as are reasonably necessary to ensure that the client is so informed.

Commissions

15.—(1) Where an executry practitioner receives or may receive commission in the form of money or otherwise—

- (a) for recommending that a client obtains any service from him or another professional person (whether or not that recommendation is acted upon); or
- (b) if a client acts upon such a recommendation,

he shall—

- (i) when making any such recommendation to the client, inform the client in writing (whether or not in the terms of engagement letter) of this fact and of the amount of the commission which he receives or may receive; and
- (ii) account to the client for the amount of the commission which he receives or may receive, whether by giving it to the client or deducting it from his fee to the client for the provision of executry services or otherwise.

(2) For the purposes of this regulation, the amount of any commission shall be inclusive of value added tax.

Records

16. An executry practitioner providing executry services for a client shall ensure that proper records are kept of all exchanges with and on behalf of his client, whether written or oral.

Avoidance of delay

17.—(1) An executry practitioner providing executry services for a client shall, subject to the instructions of that client, provide those services with reasonable expedition.

(2) Subject to regulation 20(c), an executry practitioner providing executry services for a client shall not delay in completing the executry services or refuse to complete them on the ground that any fee due to the executry practitioner in respect of those services remains unpaid.

Undertakings

18. An executry practitioner providing executry services for a client shall comply promptly with every undertaking given by or on behalf of that executry practitioner in the course of the provision of those services and, where this is not possible, shall inform the client, and any other person to whom that undertaking has been given, as soon as possible.

Limitation of liability

19. Subject to regulations 8(2) and 25, an executry practitioner shall not seek to limit or exclude any liability, whether in contract or delict or otherwise, arising out of the provision of executry services by or on behalf of that executry practitioner.

Withdrawal from transaction

20. An executry practitioner, having accepted instructions to provide executry services to a client, may refuse to provide (or cease continuing to provide) those services only—

- (a) at his client's written request;
- (b) if he is unable to obtain proper instructions from his client;
- (c) if the client and the executry practitioner have agreed in writing (whether or not in the terms of engagement letter) that the client is required to pay the total price or any part

thereof for the provision of executry services prior to completion of those services and the client has failed to pay the price that is due;

- (d) if those services concern matters outwith his knowledge or professional competence;
- (e) if he is unable to provide adequate professional service;
- (f) if there is a conflict of interest whereby, under these Regulations, he is required to cease to provide those services;
- (g) if those services are unlawful in any respect;
- (h) if his estate is sequestrated;
- (i) if for any other reasonable cause it is necessary or desirable that he should not, or should no longer, provide those services.

Clients' papers

21. An executry practitioner, having ceased to provide executry services for a client (whether because the executry services are completed or otherwise), shall hold to the order of the client all papers to which the client is entitled.

PART V

ACCOUNTS AND RECORDS

Client accounts

22.—(1) An executry practitioner shall at all times keep clients' money separate from other money and ensure that clients' money is available for payment to clients on demand or upon such conditions as the client may authorise.

(2) An executry practitioner shall pay clients' money promptly upon receipt into a client account for the particular client concerned.

(3) A client account is an interest earning account with a bank or a building society.

(4) A client account shall include in its title the word "client" and the name of the particular client concerned, except that, where the clients' money belongs to an executry or a trust, of which the client or the executry practitioner is an executor or trustee, the client account shall include in its title the names of the executors or trustees and the word "executry" or "trust", as the case may be.

(5) When opening a client account, an executry practitioner shall give written notice to the bank or building society concerned that the account is a client account and that therefore all money from time to time standing to the credit of that account belongs to the client and not to the executry practitioner.

(6) An executry practitioner shall account to the client for all interest earned on the client account for that client.

(7) An executry practitioner shall ensure that the rate of interest earned on clients' money in a client account is the best rate of interest reasonably obtained at the bank or building society holding the client account having regard to the amount of money involved and upon the basis that the money is withdrawable upon demand and without loss of interest.

(8) No charge shall be made by an executry practitioner for opening or maintaining a client account.

(9) An executry practitioner who fails to comply with any of the duties in this regulation or in regulation 23 shall be liable to compensate any client for any loss of clients' money or of interest resulting from that failure.

Operating client accounts

23.—(1) Subject to paragraph (2) an executry practitioner shall credit a client account only with clients' money and shall, promptly upon discovery, withdraw from it any other money.

(2) Where an executry practitioner receives a cheque or a banker's draft that includes clients' money as well as other money, the executry practitioner shall—

- (a) credit the appropriate client account with the full amount of the cheque or draft; and
- (b) as soon as reasonably practicable thereafter, withdraw from that account a sum equal to the amount of the cheque or draft that did not represent clients' money.

(3) Subject to paragraph (2), an executry practitioner may withdraw by cheque or transfer clients' money from a client account only—

- (a) with the written consent of that client; or
- (b) in payment of that executry practitioner's fees for providing executry services to that client provided that—
 - (i) an itemised bill has been delivered to the client; and
 - (ii) the client, having been informed in writing that the money is to be withdrawn or transferred for this purpose, has made no objection within a reasonable time of being so informed.

(4) Subject to paragraph (5), an executry practitioner shall not cause or permit any client account to become overdrawn and, in the event of a client account becoming overdrawn, shall immediately upon discovery take all such proper steps as are necessary to clear the overdraft.

(5) Paragraph (4) shall not apply where an overdraft is necessary to allow inheritance tax charged under the Inheritance Tax Act 1984(12) to be paid prior to the realisation of the executry estate.

(6) Where the money has been withdrawn from a client account wrongfully, an executry practitioner shall promptly upon discovery credit the account with the amount of the withdrawal together with any interest due thereon in terms of regulation 22(9).

Keeping records

24.—(1) An executry practitioner shall, at all times, in connection with the provision of executry services by that executry practitioner, keep such accounts as may be necessary—

- (a) to show all the dealings of that executry practitioner with clients' money or with other money handled by that executry practitioner;
- (b) to show separately in respect of each client all clients' money or other money handled by that executry practitioner; and
- (c) to distinguish all clients' money from other money including money belonging to that executry practitioner,

and shall keep such accounts at all times up to date.

(2) Where an executry practitioner—

- (a) withdraws from a client account any money in accordance with regulation 23(1); or
- (b) credits a client account in accordance with regulation 23(5),

the executry practitioner shall record the reason for the withdrawal or (as the case may be) the credit.

(3) An executry practitioner shall record all his dealings with clients' money in such of the following forms as may be appropriate—

- (a) a clients' cash book (or a clients' column of a cash book);

(12) 1984 c. 51. The citation of this Act has been amended by section 100(1)(a) of the Finance Act 1986 (c. 41).

(b) a clients' ledger (or a clients' column of a ledger); and
 (c) a record of sums transferred from the ledger account of one client to that of another,
 and no other dealings shall be recorded in such clients' cash book, ledger or columns.

(4) An executry practitioner shall keep a record of all bills rendered to clients in respect of the provision of executry services which shall list each bill separately and to specify in each case the name of the client and the date of the bill.

(5) An executry practitioner shall keep a record listing all powers of attorney which have been granted in his favour together with details of the dates on which the powers of attorney were granted.

(6) At least once every month, an executry practitioner shall reconcile the balance of the clients' cash book (or clients' column of the cash book) with the balances shown on the client account statements produced by the relevant bank or building society, and shall keep in the cash book or other appropriate place a reconciliation statement showing that this has been done.

(7) The accounts, books, ledgers and records required for the purposes of this regulation need not be kept in documentary form but, where those accounts, books, ledgers and records are kept by means of a computer or in other non documentary form, the executry practitioner shall ensure that the information comprised in those accounts, books, ledgers and records can readily be produced in a form in which it can be taken away and in which it is visible and legible.

(8) A record required for the purposes of this regulation shall be preserved by the executry practitioner for at least 40 years from the date of the last entry in it.

Bridging loans

25. An executry practitioner shall not enter into or maintain any contract or arrangement with a bank or other lender in terms of which the executry practitioner may draw down loan or overdraft facilities in his name for behoof of clients unless—

- (a) the executry practitioner shall in every case before drawing down any sums in terms of such contract or arrangement have intimated to the bank or other lender—
 - (i) the name and present address of the client for whom the loan or overdraft facilities are required; and
 - (ii) the arrangements for repayment of the loan or overdraft facilities; and
- (b) the contract or arrangement does not impose personal liability for repayment of any such loan or overdraft facilities on the executry practitioner.

Money laundering

26.—(1) Every executry practitioner shall in respect of all other business carried on by the executry practitioner comply with the provisions of the Money Laundering Regulations 1993⁽¹³⁾ as if such other business constituted relevant financial business within the meaning of those Regulations, but as if—

- (a) for the figure “1” where it appears in the second line of regulation 7(1) of those Regulations, there were substituted the figure “2”; and
- (b) regulation 12(4)(a) of those Regulations was deleted.

(2) For the avoidance of doubt, paragraph (1) is without prejudice to the application of the Money Laundering Regulations 1993 to relevant financial business.

(13) 1993/1933.

Borrowing from clients

27. An executry practitioner shall not borrow money from his client unless his client is in the business of lending money or his client has been independently advised in regard to the making of the loan.

Audit requirement

28.—(1) An executry practitioner who, in the course of providing executry services as an executry practitioner, has handled clients' money during his accounting period, shall arrange for an accountant to—

- (a) inspect all accounts, books and other records required under these Regulations to be kept during that accounting period;
- (b) send to the Board, within 6 months of the end of that accounting period, a report on the extent to which that executry practitioner has
 - (i) during that accounting period, complied with the requirements of the regulations in this Part;
 - (ii) during that accounting period, maintained adequate arrangements to enable the executry practitioner so to comply; and
 - (iii) provided the accountant with all information and explanations which are, to the best of the accountant's knowledge and belief, necessary for the purpose of making a report; and
- (c) send to the Board a list of all powers of attorney in the executry practitioner's favour which are held or granted during that accounting period.

(2) An executry practitioner shall make available for inspection by the Board, at such times and places as may be specified by the Board, and in any event every five years, any accounts, books and other records which he is required to keep under these Regulations.

(3) For the purposes of this regulation—

“accountant” means a person who is qualified to be appointed as an auditor under paragraph 13(2) of Schedule 1 to the Act; and

“accounting period” means—

- (a) a period of not less than 6 months and not more than 18 months, beginning with the date on which he is registered by the Board as an executry practitioner under section 18(2); and
- (b) any successive periods of not more than 12 months beginning immediately after the end of the previous accounting period.

PART VI

EDUCATIONAL QUALIFICATIONS, PRACTICAL TRAINING AND FURTHER TRAINING AND STUDY

Educational qualifications

29.—(1) The educational qualifications which an executry practitioner must have before his name can be entered in the register of executry practitioners are that he must have obtained, whether before or after the date of coming into force of these Regulations—

- (a) a degree in law awarded by a university in Scotland or a specified institution, which—

- (i) in a case where the degree is, either an Ordinary degree awarded before 1st January 1980 or an Honours degree awarded before 1st January 1981, includes passes in the subjects which are required for admission to the Diploma in Legal Practice offered by a university in Scotland in 1980 or which are, in the opinion of the Board, equivalent to those so required; or
- (ii) in any other case includes passes in the subjects required for admission to the Diploma in Legal Practice offered by a university in Scotland in the year in which the degree was awarded; or
- (b) a diploma or certificate in executry practice awarded by a university in Scotland or a specified institution after a course of study of at least one full-time academic year or its part-time equivalent; or
- (c) any qualification awarded by the Law Society of Scotland which, in the opinion of the Board, is equivalent to the degree, diploma or certificate referred to in (a) or (b) above; or
- (d) any qualification awarded by a university or similar institution or professional body outwith Scotland which is equivalent to the degree, diploma or certificate referred to in (a) or (b) above together with, except where such qualification is awarded in another relevant state, an aptitude certificate in executry practice in Scotland awarded by a university in Scotland or a specified institution.

(2) For the purposes of this regulation—

“aptitude certificate in executry practice” means a certificate awarded to a person after he has passed a test of his professional knowledge which is conducted with the aim of assessing his ability to provide executry services in Scotland;

“specified institution” means an institution specified as competent to grant a degree, diploma or certificate, as the case may be by virtue of section 48 of the Further and Higher Education (Scotland) Act 1992⁽¹⁴⁾;

“another relevant state” means a relevant state other than the United Kingdom;

“member state” has the same meaning as it has for the purposes of the European Communities Act 1972⁽¹⁵⁾;

“relevant state” means a member state, Iceland, Norway or Liechtenstein.

Practical training

30.—(1) The practical training which an executry practitioner must have before his name can be entered in the register of executry practitioners, is that—

- (a) he has been employed in Scotland, on or after the date of coming into force of these Regulations, by a solicitor, an executry practitioner or recognised financial institution under a training contract (or by more than one such employer under such contracts); or
- (b) he has been employed in Scotland, whether before or after the date of coming into force of these Regulations, by a solicitor, executry practitioner or a recognised financial institution under a contract of employment (or by more than one such employer under such contracts) in terms of which he has received equivalent training and experience to that he would have obtained under a training contract,

and he has a certificate to this effect from his employer which indicates (or, in the case where he has had more than one employer, he has certificates to this effect from all of his employers each of which indicate, when read together) that he has completed the training contract or, in the case mentioned in (b) above, the contract of employment to the full satisfaction of the employer and that

⁽¹⁴⁾ 1992 c. 37.

⁽¹⁵⁾ 1972 c. 68.

he has received training and experience in all the subjects mentioned in regulation 30(2)(a) during the period mentioned in regulation 30(2)(b).

(2) For the purposes of this regulation, a training contract is a contract of employment, in terms of which—

- (a) the employee receives training and experience in connection with the provision of executry services in Scotland under which he receives training in the following subjects, namely—
 - (i) the general principles of book-keeping;
 - (ii) the analysis and interpretation of profit and loss accounts and balance sheets;
 - (iii) trust and executry accounts and schemes of division;
 - (iv) wills, trusts and executries;
 - (v) professional ethics and responsibilities; and
- (b) the period of such training and experience is equivalent to no less than one year devoted full-time and exclusively to such training and experience and is achieved over a period of not more than five consecutive years.

Further training and study

31.—(1) In order to maintain appropriate standards of conduct and practice, an executry practitioner shall undertake relevant further training and study to develop his professional knowledge, skills and abilities including in particular, education and study in specific areas and topics, management skills and organisation, communication and client care skills, other areas relevant to the executry practitioners practice and any area designed to develop his ability to operate effectively as an executry practitioner.

(2) The amount and nature of the relevant further training and study required by an executry practitioner in each practice year shall be determined in accordance with regulations 32 and 33 respectively.

(3) An executry practitioner shall, within a period not exceeding 5 years from the date on which his name has been entered on the register under section 18(2), attend a course on professional ethics and practice management provided by the Board.

(4) An executry practitioner attending a course required by paragraph (3) above may include such training as part of his further training and study requirement for the practice year in which he attended the course.

(5) For the purposes of this regulation and regulations 32 to 34—

“practice year” means a year beginning on the first day of April and ending on the 31st day of the following March;

“private study” means study undertaken by less than three persons together including without prejudice to the foregoing generality, distance learning by audio, visual or correspondence courses, television and radio courses, and computer-based learning, the reading of relevant periodicals and books and writing relevant books or articles in periodicals or text books which are published;

“group study” means study in a group of three or more people which lasts for a minimum of half an hour and includes without prejudice to the foregoing generality, discussion groups, tutorials, study meetings of special interest groups, workshops, seminars or courses whether provided in-house or by executry practitioner firms, groups of firms, the Board or any other provider;

“management skills” includes, without prejudice to its generality, training in professional ethics, financial and business management, budget control, computer skills, foreign languages, interview techniques, setting priorities and time management.

Amount of further training and study

32.—(1) Subject to paragraphs (2) and (3), for every 150 hours which an executry practitioner works in a practice year, he shall be required to undertake an hour of further training and study in that year.

(2) No executry practitioner shall be required to undertake more than 20 hours of further training and study in any practice year.

(3) The requirement in paragraph (1) shall not apply to any executry practitioner—

- (a) who works for 150 hours or less in a practice year; or
- (b) whose name has been entered on the register under section 18(2) during the practice year; or
- (c) who has been removed from the register during the practice year.

Nature of further training and study

33.—(1) Subject to paragraphs (2), (3) and (4), the further training and study which an executry practitioner is required to undertake in a practice year shall be comprised of group study and private study.

(2) A minimum of three quarters of the amount of further training and study which an executry practitioner is required to undertake in a practice year shall be comprised of group study.

(3) A minimum of one quarter of any group study which is required to be undertaken by an executry practitioner in any practice year shall be comprised of management skills.

(4) An executry practitioner, who gives relevant further training and study to other executry practitioners or qualified persons may include as part of the group study which he requires to undertake in any practice year—

- (a) the time spent giving the further training and study; and
- (b) the time spent preparing for giving such further training and study, up to a maximum of 4 hours.

Monitoring of further training and study

34.—(1) An executry practitioner shall keep a record showing all the further training and study which he has undertaken in a practice year.

(2) An executry practitioner shall send to the Board, within one month after the end of each practice year, a copy of his record card for that practice year.

PART VII

MISCELLANEOUS

Complaints

35.—(1) An executry practitioner shall consider any complaint made to him in writing by a client or any other person having an interest (“the complainant”) in connection with the executry services he has provided.

(2) An executry practitioner shall, within a reasonable period of time after receipt of any complaint, write to the complainant—

- (a) setting out his findings with regard to the subject matter of the complaint and what action, if any, he proposes to take in the matter; and
- (b) informing the complainant that he may make his complaint to the Board.

(3) Where, following a complaint made to them, the Board are not satisfied as mentioned in section 20(1) but have recommended that the executry practitioner should take certain steps, the executry practitioner shall have regard to those recommendations and shall, within a period of one month beginning with the date on which the recommendations were sent to him, notify the Board and the complainant of the action which he has taken, or proposes to take, to comply with the recommendation or in consequence of further consideration of the matter by him.

Satisfaction of Claims

36. An executry practitioner shall at all times maintain suitable arrangements (whether by means of insurance policies or otherwise) for the satisfaction of any successful claims against him arising out of the provision by him of executry services.

St Andrew's House,
Edinburgh
10th February 1997

James Douglas Hamilton
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Secretary of State under section 18(10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

These Regulations make provision with a view to maintaining appropriate standards of conduct and practice of executry practitioners who are registered as such with the Scottish Conveyancing and Executry Services Board. In particular, the Regulations make provision with respect to—

- (a) the general standards of conduct of executry practitioners (regulations 3-8);
- (b) conflicts of interest (regulation 9-11);
- (c) conduct of executry services (regulations 12-21);
- (d) client accounts and records (regulations 22-28);
- (e) educational qualifications, practical training and further training and study (regulation 29-34); and
- (f) miscellaneous matters such as complaints and satisfaction of claims (regulations 35-36).