Table of Statutes referred to in this Act

Short Title	Session and Chapter
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict. c. 93.
Interpretation Act, 1889	52 & 53 Vict. c. 63.
Courts of Law Fees (Scotland) Act, 1895 ...	58 & 59 Vict. c. 14.
Patents and Designs Act, 1907	7 Edw. 7. c. 29.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Solicitors Act, 1932...	22 & 23 Geo. 5. c. 37.
Solicitors (Scotland) Act, 1933	23 & 24 Geo. 5. c. 21.
Arbitration Act, 1934	24 & 25 Geo. 5. c. 14.
Trade Marks Act, 1938	1 & 2 Geo. 6. c. 22.
Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939	2 & 3 Geo. 6. c. 107.
Supreme Court of Judicature (Amendment) Act, 1944	7 & 8 Geo. 6. c. 9.
Atomic Energy Act, 1946	9 & 10 Geo. 6. c. 80.
Crown Proceedings Act, 1947	10 & 11 Geo. 6. c. 44.
Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948	11 & 12 Geo. 6. c. 66.

CHAPTER 63

Legal Aid and Solicitors (Scotland), Act 1949

ARRANGEMENT OF SECTIONS

PART I

LEGAL AID AND LEGAL ADVICE

Legal Aid

Section.
1. Scope and general conditions of legal aid.
2. Financial conditions of legal aid.
3. Contributions from assisted persons and payments out of property recovered.
4. Assessment of disposable capital and income and of maximum contribution.
5. Legal aid in matters not involving litigation.
6. Solicitors and counsel.

Legal Advice

7. Right to and nature of legal advice.

Administration and Finance

8. Functions of Law Society.
9. Legal Aid (Scotland) Fund.
10. Accounts and audit.
11. Pension rights of employees.

Supplementary

Section.
12. Regulations.
13. Rules of Court.
14. Adaptation of rights to indemnity.
15. Offences.
16. Application to Crown.
17. Interpretation, transitional provisions, repeals and citation of Part I.

PART II

ESTABLISHMENT OF LAW SOCIETY OF SCOTLAND AND PROVISIONS RELATING TO SOLICITORS

Law Society of Scotland

18. Establishment of Law Society of Scotland and provisions relating to the Society.

Practising certificates

19. Certificate required for practising as a solicitor.

Rules for professional conduct

20. Council of Society to make rules with respect to bank accounts, etc.
21. Relief to banks.

Scottish Solicitors Guarantee Fund

22. Constitution of Guarantee Fund.

Discipline and offences

23. Complaints to Discipline Committee.
24. Provisions as to employment of disqualified solicitor.
25. Provisions as to taking apprentices.

Supplementary

26. Minor and consequential amendments, and repeals.
27. Service of notices, etc.
28. Interpretation, citation and construction of Part II.

PART III

GENERAL

29. Citation and construction.

SCHEDULES:

First Schedule.—Proceedings for which legal aid may be given.
Part I.—Description of Proceedings.
Part II.—Excepted Proceedings.
Second Schedule.—Resources to be disregarded on application for legal aid.
Third Schedule.—Remuneration of persons giving legal aid.

Fourth Schedule.—Provisions relating to the Law Society of Scotland.
Part I.—General.
Part II.—Temporary provisions with respect to meetings of the Society.
Fifth Schedule.—Provisions with respect to practising certificates and the suspension of solicitors from practising in cases of sequestration, of granting a trust deed for creditors or of insanity.
Sixth Schedule.—Provision with respect to the Scottish Solicitors Guarantee Fund.
Seventh Schedule.—Minor and consequential amendments.
Eighth Schedule.—Enactments repealed.

An Act to make legal aid and advice in Scotland more readily available for persons of small or moderate means and to enable the cost of legal aid or advice for such persons to be defrayed wholly or partly out of moneys provided by Parliament; to establish a Law Society of Scotland; to amend the law relating to solicitors in Scotland; and for purposes connected with the matters aforesaid. [30th July 1949.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

LEGAL AID AND LEGAL ADVICE

Legal Aid

Scope and general conditions of legal aid.

1.—(1) This and the three next following sections provide for, and (save as hereinafter mentioned) relate only to legal aid in connection with proceedings before courts and tribunals in Scotland and before the House of Lords on appeal from the Court of Session.

(2) Unless and until regulations otherwise provide, the proceedings in connection with which legal aid may be given are any proceedings of a description mentioned in Part I of the First Schedule to this Act, except proceedings mentioned in Part II of that Schedule.

PART I —*cont.*

(3) Subject to the provisions of this section, the proceedings in connection with which legal aid may be given may be varied by regulations, and the regulations may describe the proceedings to be included or excluded by reference to the court or tribunal, to the issues involved, to the capacity in which the person requiring legal aid is concerned, or otherwise.

(4) Regulations made for the purpose of the last foregoing subsection—

(*a*) shall not provide for legal aid being given in connection with proceedings before any court or tribunal before which persons have no right and are not normally allowed to be heard by counsel or a solicitor; and

(*b*) shall not come into force unless or until approved by resolution of each House of Parliament.

(5) Legal aid shall consist of representation, on the terms provided for by this Act, by a solicitor and so far as necessary by counsel (including all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a settlement to prevent or bring to an end any proceedings).

(6) A person shall not be given legal aid in connection with any civil proceedings or in connection with any criminal proceedings by way of appeal against conviction or sentence (whether in summary proceedings or in proceedings on indictment) unless he shows that he has a *probabilis causa litigandi*, and may also be refused legal aid in any such proceedings as aforesaid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(7) Save as expressly provided by or under this Part of this Act, the fact that the services of counsel or a solicitor are given by way of legal aid shall not affect the relationship between or the rights of counsel, solicitor and client.

Financial conditions of legal aid.

2.—(1) Subject to this Part of this Act, legal aid shall be available for any person whose disposable income does not exceed four hundred and twenty pounds a year:

Provided that a person may be refused legal aid if he has a disposable capital of more than five hundred pounds and it appears that he can afford to proceed without legal aid.

(2) Notwithstanding the provisions of the foregoing subsection, legal aid shall be available in connection with criminal proceedings to an accused person without inquiry into his resources—

(*a*) where the proceedings are taken under solemn procedure, until, after being brought before a magistrate

PART I —*cont.*

for examination on declaration, he is admitted to bail or committed until liberated in due course of law, or

(*b*) where the proceedings are taken under summary procedure, until the conclusion of the first diet at which he is called upon to plead.

(3) Where a person receives legal aid in connection with any proceedings—

(*a*) the expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor acting for him, shall be so paid ;

(*b*) his solicitor and counsel shall not take any payment in respect of the legal aid except such payment as is directed by this Part of this Act to be made out of the legal aid fund ;

(*c*) he may be required to make a contribution to the legal aid fund in respect of the sums payable thereout on his account;

(*d*) any sums recovered by virtue of an award of expenses or of an agreement as to expenses in his favour with respect to the proceedings shall be paid to the legal aid fund ;

(*e*) his liability by virtue of an award of expenses against him with respect to the proceedings shall not exceed the amount (if any) which in the opinion of the court or tribunal making the award is a reasonable one for him to pay having regard to all the circumstances, including the means and the conduct in connection with the dispute of all parties.

(4) It shall be competent, at any time within such period as may be prescribed after the making of such an award of expenses as is mentioned in paragraph (*e*) of the last foregoing subsection, for any party concerned in such award to apply to the court or tribunal by which the award was made for a re-assessment of the amount of the award on the ground that since the award was made there has been a relevant change of circumstances, and on such application the court or tribunal may re-assess the amount of the award as seems to them proper.

(5) For the purposes of any inquiry under this section as to the means of a person who has been found liable in expenses, his dwelling-house, wearing apparel and household furniture and the tools and implements of his trade or profession shall be left out of account except to such extent as may be prescribed, and except as aforesaid, shall not, in any part of the United Kingdom, be subject to diligence in execution of the award.

PART I —*cont.*

Contributions from assisted persons and payments out of property recovered.

3.—(1) A person's contribution to the legal aid fund in respect of any proceedings may include—

(*a*) a contribution in respect of income not greater than half the amount (if any) by which his disposable income exceeds one hundred and fifty-six pounds a year; and

(*b*) a contribution in respect of capital not greater than the amount (if any) by which his disposable capital exceeds seventy-five pounds.

(2) A person may be required to make any contribution to the legal aid fund in one sum or by instalments.

(3) If the total contribution to the legal aid fund made by a person in respect of any proceedings is more than the net liability of that fund on his account, the excess shall be repaid to him.

(4) Except so far as regulations otherwise provide, any sums remaining unpaid on account of a person's contribution to the legal aid fund in respect of any proceedings and, if the total contribution is less than the net liability of that fund on his account, a sum equal to the deficiency shall be paid, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him in the proceedings.

(5) The reference in the last foregoing subsection to property recovered or preserved for any person shall include his rights under any settlement arrived at to prevent or bring to an end the proceedings and any sums recovered by virtue of an award of expenses made in his favour in the proceedings (not being sums payable into the legal aid fund under the last foregoing section).

(6) Nothing in subsection (4) of this section shall prevent a court allowing any damages or expenses to be set off against other damages or expenses.

(7) References in this section to the net liability of the legal aid fund on any person's account in relation to any proceedings refer to the aggregate amount of the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor and not recouped to that fund by sums which are recovered by virtue of an award of expenses or of an agreement as to expenses in his favour with respect to those proceedings.

Assessment of disposable capital and income and of maximum contribution.

4.—(1) References in this Act to a person's disposable income or disposable capital shall be taken as referring to the rate of his income or the amount of his capital after making—

(*a*) such deductions as may be prescribed in respect of the maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which the person in question must or reasonably may provide; and

(*b*) such further allowances as may be prescribed to take account of the nature of his resources.

PART I —*cont.*

(2) Regulations may make provision as to the manner in which the rate of a person's income and the amount of his capital are to be computed for the purposes of the foregoing subsection, and in particular for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income.

(3) The regulations shall include provision for securing that the resources of a person seeking or receiving legal aid shall be treated as not including the subject matter of the dispute.

(4) Except in so far as the regulations otherwise provide, any resources of a person's wife or husband shall be treated for the purposes of this section as that person's resources, and the regulations may also make provision, in relation to minors and pupils and other special cases, for taking into account the resources of other persons.

(5) The regulations shall include provision for securing that in computing resources there shall be observed the rules set out in paragraphs 1, 4, 5 and (so far as relevant) 6 of the Second Schedule to the National Assistance Act, 1948, and again set out with the necessary adaptations of the said paragraph 6 in the Second Schedule to this Act:

Provided that the regulations may provide that the reference in the said paragraph 1 to borrowing money shall not apply in any prescribed circumstances.

(6) Subject to the provisions of this section, a person's disposable income and disposable capital, and the maximum amount of his contribution to the legal aid fund in respect of any proceedings, shall be determined by the National Assistance Board, and the Board may call attention to any special circumstances affecting the maximum amount of the lump sum and periodical payments which he could reasonably make on account of any contribution.

(7) Any increase attributable to the last foregoing subsection in the expenses of the National Assistance Board shall be defrayed out of moneys provided by Parliament.

(8) Regulations for the purposes of this section shall be made with the concurrence of the Treasury.

Legal aid in matters not involving litigation.

5.—(1) This section provides for, and (except for subsection (6)) relates only to, legal aid in taking steps to assert or dispute a claim where—

(*a*) the question of taking, defending or being a party to proceedings before a court or tribunal does not arise or has not yet arisen; but

(*b*) if it did arise, the proceedings would, or might properly, be such that legal aid could be given in connection therewith under section one of this Act.

PART I —*cont.*

(2) Legal aid under this section shall consist of the assistance of a solicitor on the terms provided for by this section, and (save as expressly provided by or under this Part of this Act) the fact that the assistance is given by way of legal aid shall not affect the relationship between or rights of solicitor and client.

(3) A person shall not be given legal aid under this section unless he shows that he has reasonable grounds for taking steps to assert or dispute the claim, and may also be refused such aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(4) Subject to the provisions of this section, sections two, three and four of this Act shall apply for the purposes of this section with the necessary modifications of references to proceedings or to the subject matter of the dispute and with the following omissions, that is to say—

(*a*) so much of sections two and three as relates to awards of expenses,

(*b*) in section four, subsections (5), (6) and (7).

(5) Unless and until regulations otherwise provide, legal aid shall not be available under this section for any person whose disposable income exceeds one hundred and fifty-six pounds a year or whose disposable capital exceeds seventy-five pounds; and provision may be made by regulations for restricting the nature and extent of the assistance which may be given by way of legal aid under this section.

(6) Where a person receives legal aid under this section in any matter and, on that matter giving rise or appearing likely to give rise to proceedings, he is given legal aid also in connection with those proceedings, then, except in so far as regulations otherwise provide, section three of this Act shall apply as if all the legal aid had been received in connection with the proceedings.

Solicitors and counsel.

6.—(1) Lists of solicitors and advocates willing to act for persons receiving legal aid shall be prepared and maintained, and there may be separate lists for different purposes, for different courts and for different districts.

(2) Any practising solicitor or advocate shall be entitled to have his name on the appropriate lists or any of them, unless the Law Society, in the case of a solicitor, or the Faculty of Advocates, in the case of an advocate, determine that there is good reason for excluding him arising out of his conduct when acting or selected to act for persons receiving legal aid or his

PART I —*cont.*

professional conduct generally, or, in the case of a member of a firm of solicitors, out of that of any person who is for the time being a member of the firm:

Provided that any solicitor or advocate may appeal to the Court of Session against his exclusion from any list, and on such appeal the Court may make such order in the matter as they think fit.

(3) Where a person is entitled to receive legal aid, the solicitor to act for him and, if the case requires counsel, his counsel, shall be selected from the appropriate list, and he shall be entitled to make the selection himself:

Provided that—

(*a*) where in pursuance of arrangements made by the Law Society in accordance with the scheme made under section eight of this Act a solicitor is available in any court of summary jurisdiction within the meaning of the Summary Jurisdiction (Scotland) Act, 1908, for the special purpose of giving legal aid in connection with proceedings in that court to any accused person during the period ending with the conclusion of the first diet at which such person is called on to plead, an accused person seeking such legal aid under this Part of this Act in that court shall not be entitled to receive such aid during that period otherwise than by representation by that solicitor; and

(*b*) this subsection shall not prejudice the right of solicitor or counsel, where he has good reason, to refuse or give up a case or to entrust it to another.

(4) Subject to this Part of this Act, a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees due to counsel for so acting shall be paid to the solicitor instructing him out of that fund.

(5) The sums payable to a solicitor or counsel for acting for a person receiving legal aid shall not exceed those allowed under the Third Schedule to this Act.

(6) In the foregoing provisions of this section, references to acting for a person receiving legal aid shall, in relation to a solicitor, include references to acting for such a person on the instructions of another solicitor.

(7) Subsection (5) of this section shall not affect the sums recoverable by virtue of an award of expenses in favour of a person who has received legal aid or of an agreement as to expenses in favour of such a person which provides for taxation; and for the purposes of any such award or agreement, the solicitor who acted for the person in whose favour it is made shall be treated as having paid any counsel's fees.

Legal advice

PART I —*cont.*

Right to and nature of legal advice.

7.—(1) Subject to this Part of this Act, legal advice shall be available in Scotland for any person.

(2) Legal advice shall consist of oral advice on legal questions given by a solicitor in accordance with the scheme made under section eight of this Act and shall include help in preparing an application for legal aid and in supplying information required in connection therewith for determining disposable income and capital, but (subject to the following provisions of this section) shall not include advice on any law other than Scots law.

(3) Lists of solicitors willing to give legal advice shall be prepared and maintained, and there may be different lists for different districts; and the provisions of subsections (2) to (5) of the last foregoing section shall, subject to the necessary modifications, apply for the purposes of this section.

(4) In the case of a member of the forces, legal advice shall include advice on the law—

(*a*) of any part of the United Kingdom; and

(*b*) where regulations so provide, of any other country or territory in which he has been resident whether in the course of his service or not.

(5) In the case of a person who has been a member of the forces at any time after the passing of this Act, the last foregoing subsection shall apply so as to authorise the giving of advice on matters arising in the course of his service furth of Scotland as it applies in the case of a person who is a member of the forces.

(6) If provision corresponding to this Part of this Act is made for England, legal advice shall, in the case of any person, include—

(*a*) help for the purposes of that provision corresponding to the help mentioned in subsection (2) of this section; and

(*b*) where regulations so provide, advice on the law of England.

(7) If provision corresponding to this Part of this Act is made for Northern Ireland, the last foregoing subsection shall apply in relation to Northern Ireland as it applies in relation to England.

(8) Provision may be made by regulations for further defining or restricting the questions (whether of Scots or any other law) on which legal advice may be given.

(9) A person seeking legal advice may be required—

(*a*) to satisfy such person as may be designated for the purpose under the scheme made under section eight of this Act that he cannot afford to obtain it in the ordinary way; and

(*b*) to pay a fee of half a crown or such other fee as may be prescribed for each interview.

PART I —*cont.*

(10) Any fees paid under this section shall be paid into the legal aid fund.

(11) A person seeking legal advice shall have the same privilege for communications made for that purpose to the person giving it, and the same remedies against that person for any negligence, as if he had been consulting him as his solicitor in the ordinary way.

(12) The limitation of legal advice to oral advice shall not prevent the person giving it, where he thinks the person seeking it will need a written note of the advice given or any part of it, from giving him such a note.

Administration and finance

Functions of Law Society.

8.—(1) Subject to this Part of this Act, it shall be the responsibility of the Law Society to make arrangements, in accordance with a scheme made by them with the approval of the Secretary of State and with the concurrence of the Treasury, for securing that legal aid and legal advice are available as required by this Part of this Act and generally to administer this Part of this Act.

(2) Any scheme made as aforesaid may be varied or revoked by a subsequent scheme so made.

(3) For the purpose of making or varying any such scheme as aforesaid the Law Society shall appoint a committee consisting of members of the Law Society and of persons nominated by the Faculty of Advocates.

(4) Any scheme under this section shall provide for the establishment for the purpose of administering the scheme of a central committee consisting of members of the Law Society and of the Faculty of Advocates, and for the inclusion in such a committee, to an extent not exceeding one-third of the total membership thereof, of persons who are not members of the Law Society or of the Faculty of Advocates.

(5) Any scheme under this section shall also provide for the establishment of such local committees as may be specified in the scheme.

(6) Any scheme under this section shall define the constitution of any committee established as aforesaid, may regulate its quorum and procedure and the tenure of office of its members, and may provide for the payment to its members of fees and allowances; but any such committee shall have power to determine its own procedure so far as not regulated as aforesaid.

(7) Where a scheme under this section is submitted to the Secretary of State for his approval, any member of the committee who was present when the scheme or any provision thereof was considered by the committee, and who then objected to the scheme or to that provision, may inform the Secretary of State of his objection; and the Secretary of State shall not approve

a scheme, where he has been informed of an objection under this subsection, without first giving the members of the committee an opportunity to make representations about the matter in dispute.

(8) Subject to this Part of this Act, a scheme under this section may include provisions as to the persons by whom and the manner in which questions arising in the administration of this Part of this Act are to be determined and as to any other matters incidental to the administration thereof.

(9) Nothing done by the Law Society in securing in accordance with this Part of this Act that legal aid is available to any person in connection with any proceedings shall render them liable to be held to be *dominus litis* in relation to those proceedings.

(10) The Law Society shall, as soon as possible after the end of each financial year, make a report to the Secretary of State on the operation of this Part of this Act during that year.

(11) A copy of such report shall be laid before Parliament by the Secretary of State.

Legal Aid (Scotland) Fund.

9.—(1) The functions of the Law Society under this Part of this Act shall include the establishment and administration of the Legal Aid (Scotland) Fund (in this Part of this Act referred to as " the legal aid fund ").

(2) All receipts and expenses of the Law Society attributable to this Part of this Act shall be paid into and out of the legal aid fund, and the general funds of the Law Society shall be indemnified thereout against any liability in respect of those expenses.

(3) The said expenses shall include—

(*a*) any fees and allowances payable to members of a committee by virtue of the last foregoing section;

(*b*) a proper proportion of any expenses incurred partly in connection with functions under this Part of this Act and partly for other purposes;

(*c*) such sums as may be proper for the use wholly or partly in connection with those functions of property acquired for other purposes.

(4) The said receipts shall include such sums as may be proper for the use by the Law Society otherwise than in connection with their functions under this Part of this Act of property acquired at the expense of the legal aid fund.

(5) The proper proportion of any expenses, or the proper sum, for the purpose of any question arising under subsection (3) or (4) of this section shall be determined by the Secretary of State.

PART I —*cont.*

(6) The sums required to meet payments out of the legal aid fund, after allowing for sums received apart from this provision, shall be paid to that fund by the Secretary of State at such times and in such manner as he may with the approval of the Treasury determine, and shall be so paid out of moneys provided by Parliament.

(7) Estimates of the sums required as aforesaid shall from time to time be submitted to the Secretary of State by the Law Society.

(8) An estimate shall be submitted under the last foregoing subsection at least once in every financial year at such time as the Secretary of State may with the approval of the Treasury direct.

(9) An estimate under that subsection shall be in such form and shall give such particulars as may be so directed.

Accounts and audit.

10.—(1) The Law Society shall keep such accounts with respect to the legal aid fund and shall prepare in respect of each financial year a statement of accounts in such form, as the Secretary of State may with the approval of the Treasury direct.

(2) The accounts shall be audited by persons to be appointed in respect of each financial year by the Secretary of State and in accordance with a scheme of audit approved by him, and the auditors shall be furnished by the Law Society with copies of the said statement and shall report to the Secretary of State on the accounts and the said statement.

(3) No person shall be qualified to be so appointed auditor unless he is a member of one or more of the following bodies:—

The Society of Accountants in Edinburgh;
The Institute of Accountants and Actuaries in Glasgow;
The Society of Accountants in Aberdeen;
The Institute of Chartered Accountants in England and Wales;
The Society of Incorporated Accountants and Auditors;
The Association of Certified and Corporate Accountants;
The Institute of Chartered Accountants in Ireland.

(4) So soon as the accounts have been audited, the auditors shall send to the Secretary of State copies of the statement of accounts and of their report, and the Secretary of State shall send a copy of the statement and of the report to the Comptroller and Auditor General.

(5) The Comptroller and Auditor General shall examine every statement and report sent to him under the last foregoing subsection, and may inspect the accounts kept with respect to the legal aid fund and any records relating thereto, and shall certify every such statement and lay a copy of it together with his report thereon before Parliament.

PART I —*cont.*

Pension rights of employees.

11.—(1) Arrangements shall be made, in accordance with regulations, for providing pensions to or in respect of persons employed by the Law Society whole-time for the purpose of their functions under this Part of this Act.

(2) The regulations may require the arrangements to extend, with any necessary adjustments, to persons employed by the Law Society part-time for that purpose or (whether whole-time or part-time) for that and other purposes.

(3) The arrangements may include the establishment and administration, by the Law Society or otherwise, of a pension scheme, with or without a pension fund.

(4) The regulations may direct that receipts and expenses of the Law Society attributable to their establishment and administration of a pension scheme under this section shall, notwithstanding anything in section nine of this Act, be dealt with under the scheme instead of being paid into and out of the legal aid fund.

(5) Regulations for the purposes of this section shall be made with the concurrence of the Treasury.

Supplementary

Regulations.

12.—(1) The Secretary of State may make such regulations as appear to him necessary or desirable for preventing abuses of this Part of this Act by persons seeking or receiving legal aid or advice.

(2) Regulations may make provision as to the information to be furnished by a person seeking or receiving legal aid or advice.

(3) Regulations may also modify any provision of this Part of this Act so far as appears to the Secretary of State necessary to meet the special circumstances where—

(*a*) a person seeking or receiving legal aid or advice—

(i) is not resident in Scotland; or

(ii) is concerned in a representative, fiduciary or official capacity; or

(iii) is concerned jointly with or has the same interest as other persons, whether receiving legal aid or advice or not; or

(iv) has available to him rights or facilities making it unnecessary for him to take advantage of this Part of this Act, or has a reasonable expectation of receiving financial or other help from a body of which he is a member;

(*b*) a person seeks legal aid in a matter of special urgency;

(*c*) a person begins to receive legal aid after having consulted a solicitor in the ordinary way with respect

PART I —*cont.*

to the same matter, or ceases to receive legal aid before the matter in question is finally settled;

(*d*) there is any relevant change of circumstances while a person is receiving legal aid.

(4) The power of the Secretary of State to make regulations shall be exercisable by statutory instrument.

(5) Any statutory instrument by which that power is exercised, other than one making regulations for the purposes of subsection (3) of section one of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Rules of Court.

13.—(1) The Court by act of adjournal or act of sederunt, as the case may be, may—

(*a*) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal aid, and as to the apportionment of sums recovered or recoverable by virtue of any award of expenses made generally with respect to proceedings treated as distinct;

(*b*) regulate the procedure of any court or tribunal in relation to legal aid, and in particular may make provision—

(i) as to the taxation of expenses incurred in connection with proceedings not actually begun; and

(ii) as to the cases in which and the extent to which a person receiving legal aid may be required to find caution, and the manner in which caution in such cases may be found;

(*c*) make provision as to the cases in which a person may be treated as having disentitled himself to a continuance of legal aid by his conduct in connection therewith;

(*d*) make provision for the recovery of sums due to the legal aid fund and for making effective the priority conferred by this Part of this Act on the payment of such sums out of property recovered or preserved for a person receiving legal aid, including provision—

(i) for the enforcement for the benefit of that fund of any award of expenses or any agreement as to expenses in favour of a person who has received legal aid ; and

(ii) making a solicitor's right to payment out of the legal aid fund dependent, in whole or in part, on his performance of any duties imposed on him by any act of sederunt or act of adjournal made for the purposes of this paragraph.

PART I —*cont.*

(2) The High Court of Justiciary by act of adjournal may fix the fees to be paid in the High Court and in the inferior courts in respect of the representation of persons receiving legal aid in connection with criminal proceedings therein, and the Court of Session by act of sederunt may make provision for the like matters in connection with civil proceedings in any court or tribunal other than the Court of Session and the sheriff court.

(3) The Court may, by act of adjournal or act of sederunt, as the case may be, restrict to such proportion of the fees for the time being applicable as may be provided therein the fees to be paid to auditors of court, messengers-at-arms, sheriff officers and shorthand writers in any case where such fees are payable in the first instance by or on behalf of a person receiving legal aid:

Provided that the imposition of any restriction under this subsection shall not affect the sums recoverable by virtue of an award of expenses in favour of a person who has received legal aid, or of an agreement as to expenses in favour of such a person which provides for taxation.

(4) The Court may, by act of adjournal or act of sederunt, as the case may be, make provision for the taxation by the Auditor of the Court of Session or the auditor of the sheriff court of accounts of expenses incurred in connection with the giving of legal aid and with respect to the remuneration to be paid to auditors in respect of the taxation of such accounts.

(5) Before making rules of court regulating the procedure of any court or tribunal, the Court shall so far as practicable consult any rules council or similar body by whom or on whose advice rules of procedure for the court or tribunal may be made apart from this Act or whose consent or concurrence is required to any such rules so made.

(6) The powers conferred by this section on the Court shall be exercisable by statutory instrument, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules of court made under this section by the Court in like manner as if the rules had been made by a Minister of the Crown.

(7) In this section the expression "the Court" means in relation to criminal proceedings, the High Court of Justiciary, and in relation to civil proceedings, the Court of Session.

Adaptation of rights to indemnity.

14.—(1) This section shall have effect for the purpose of adapting in relation to this Part of this Act any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Part of this Act shall be disregarded.

PART I —*cont.*

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, to the legal aid fund) the right shall enure also for the benefit of that fund as if the expenses incurred by that fund on behalf of the said person in connection with the proceedings had been incurred by him.

(4) Where—

(*a*) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and

(*b*) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity;

the right to be indemnified shall be treated for the purposes of the last-foregoing subsection as not being subject to that condition.

(5) Where under subsection (3) of this section a person's right to be indemnified against expenses incurred in connection with any proceedings enures for the benefit of the legal aid fund, then, for the purposes of section three of this Act, the net liability of the fund on his account shall be treated as reduced by the amount of any sums recovered for the benefit of the fund by virtue of the said right.

(6) The three last foregoing subsections shall apply in relation to legal aid under section five of this Act with the necessary modifications of references to proceedings:

Provided that, where by virtue of subsection (6) of that section the legal aid is treated for the purposes of section three of this Act as given in connection with any proceedings, it shall also be so treated for the purposes of this section.

Offences.

15.—(1) If any person seeking or receiving legal aid or advice—

(*a*) wilfully fails to comply with any regulations as to the information to be furnished by him; or

(*b*) in furnishing any information required by the regulations or required for the purpose of establishing whether he has a *probabilis causa litigandi* knowingly makes any false statement or false representation;

he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both.

PART I —*cont.*

(2) No information furnished for the purposes of this Part of this Act to the Law Society or to any committee or person on their behalf shall be disclosed—

(*a*) in the case of such information furnished by, or by any person acting for, a person seeking or receiving legal aid or advice, without the consent of the person seeking or receiving legal aid or advice; or

(*b*) in the case of such information furnished otherwise than as aforesaid, without the consent of the person who furnished it;

and any person who, in contravention of this subsection, discloses any information obtained by him when employed by or acting on behalf of the Law Society shall be liable on summary conviction to a fine not exceeding one hundred pounds:

Provided that this subsection shall not apply to the disclosure of information—

(i) for the purpose of facilitating the proper performance by any person or body of functions under this Part of this Act; or

(ii) for the purpose of any criminal proceedings for an offence thereunder or of any report of any such proceedings.

(3) Notwithstanding anything in the Summary Jurisdiction (Scotland) Act, 1908, proceedings for an offence against subsection (1) of this section may be commenced at any time within two years from the date of the commission of the offence or within six months from the date when evidence sufficient in the opinion of the Lord Advocate to justify proceedings comes to his knowledge, whichever period is the shorter; and for the purposes of this subsection a certificate by the Lord Advocate as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

(4) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving legal aid or advice is not information furnished to the Law Society or a person on their behalf.

Application to Crown.

16. This Part of this Act shall bind the Crown.

Interpretation, transitional provisions, repeals, and citation of Part I.

17.—(1) In this Part of this Act, unless the context otherwise requires—

the expression "Law Society" means the Law Society of Scotland established under the provisions of Part II of this Act, and any reference to the Council of the Law Society shall be taken as a reference to the council elected in accordance with the provisions of the said Part II;

PART I —*cont.*

the expressions "legal aid" and "legal advice" mean respectively legal aid and legal advice under this Part of this Act;

the expression "legal aid fund," means the Legal Aid (Scotland) Fund established in accordance with section nine of this Act;

the expression "member of the forces" means a person serving on full pay as a member of any of the naval, military or air forces of the Crown raised in the United Kingdom (including any women's force administered by the Admiralty, Army Council or Air Council);

the expression "person" does not include a body of persons, corporate or unincorporate, so as to authorise legal aid or advice to be given to such a body;

the expression "prescribed" means prescribed by regulations;

the expression "regulations" means regulations made by the Secretary of State under this Part of this Act;

the expression "tribunal" includes an arbiter or oversman, however appointed, and whether the arbitration takes place under a reference by consent or otherwise.

(2) Without prejudice to the powers conferred by the foregoing provisions of this Part of this Act, regulations may make such provision (including provision modifying this Part of this Act) as appears to the Secretary of State, with the concurrence of the Treasury, to be expedient as to the application of this Part of this Act in relation to persons who have been admitted to take, defend or be a party to any proceedings in forma pauperis or as poor persons, and to other persons concerned in proceedings commenced before or shortly after legal aid is made available.

(3) The Act of the Parliament of Scotland, 1424, cap. 24 (which provides for the appointment of counsel for the poor), so much of section (10) of the Act of the Parliament of Scotland, 1587, cap. 57, as provides for the appointment of counsel and solicitors to act for persons accused of crime, the Appeal (Forma Pauperis) Act, 1893, and section fifty-one of, and rules one hundred and fifty-two to one hundred and sixty-nine in the First Schedule to, the Sheriff Courts (Scotland) Act, 1907 (which relate to the poor's roll in the sheriff court) shall cease to have effect.

(4) This Part of this Act (including the First, Second and Third Schedules and Part I of the Eighth Schedule to this Act) may be cited separately as the Legal Aid (Scotland) Act, 1949, and shall come into force on such day as the Secretary of State may by statutory instrument appoint, and different days may be appointed for different purposes.

(5) The enactments specified in Part I of the Eighth Schedule to this Act are hereby repealed.

PART II

ESTABLISHMENT OF LAW SOCIETY OF SCOTLAND AND PROVISIONS RELATING TO SOLICITORS

Law Society of Scotland

Establishment of Law Society of Scotland and provisions relating to the Society.

18.—(1) There shall be established a Society (in this Part of this Act referred to as " the Society ") to be called " The Law Society of Scotland," which Society shall be a body corporate by that name, shall have a common seal and may sue and be sued under that name.

(2) Every solicitor who has in force a practising certificate under section nineteen of this Act shall, by virtue thereof and without election, be a member of the Society and shall cease to be a member when the certificate ceases to have effect:

Provided that until the day appointed for the purposes of the said section nineteen every solicitor who is the holder of a certificate by the Commissioners of Inland Revenue authorising him to practise as a solicitor in Scotland shall, while that certificate is in force, be a member of the Society by virtue thereof and without election.

(3) Subject to the provisions of this Act, all powers and duties vested in the General Council of Solicitors in Scotland shall be transferred to and vest in the Council of the Society, and references in any Act of Parliament, deed, decree or other document to the General Council shall be construed as references to the Council of the Society.

(4) All property held by or on behalf of the General Council shall be transferred to and vest in the Society subject to any debts and liabilities of the General Council, and the General Council and any person holding property on behalf of that Council shall at the expense of the Society execute all such documents as are necessary for the purposes of giving effect to the provisions of this subsection.

(5) The provisions of the Fourth Schedule to this Act shall have effect with respect to the Society.

Practising Certificates

Certificate required for practising as a solicitor.

19.—(1) Subject to the provisions of this section, a person shall not, after the appointed day, be qualified to practise as a solicitor unless he has in force a certificate (in this Act referred to as a " practising certificate ") authorising him to practise as a solicitor, and any person who after that date practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence under the principal Act unless he proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.

PART II —*cont.*

(2) Practising certificates shall be issued by the registrar in accordance with the provisions of the Fifth Schedule to this Act so, however, that a practising certificate shall not be issued to a solicitor while he is suspended from practice as a solicitor.

(3) The provisions of the Fifth Schedule to this Act shall have effect with respect to practising certificates issued by the registrar and the suspension of solicitors from practice in cases of sequestration, of granting a trust deed for creditors or of insanity.

(4) Nothing in this section shall require a practising certificate to be taken out by a person who is by law authorised to act as solicitor to a public department without admission, or by any assistant or officer appointed to act under the direction of such solicitor.

Rules for Professional Conduct

Council of Society to make rules with respect to bank accounts, etc.

20.—(1) The Council of the Society shall make rules—

(*a*) as to the opening and keeping by solicitors of accounts and the deposits at banks for moneys not belonging to them received by them in the course of their practice;

(*b*) as to the keeping by solicitors of books and accounts containing particulars and information as to moneys not belonging to them received, held or paid by them in the course of their practice; and

(*c*) subject to the provisions of the Sixth Schedule to this Act, as to the action which the Council may take to enable them to ascertain whether or not the rules are being complied with;

and may, if they see fit, make rules for regulating in respect of any other matter the professional practice, conduct and discipline of solicitors:

Provided that—

(i) rules shall not be made under this section until a Council of the Society has been elected in accordance with a scheme approved under paragraph 6 of Part I of the Fourth Schedule to this Act;

(ii) before making any rules under this section the Council shall send to each member of the Society a draft of the rules and shall thereafter submit the same to a meeting of the Society and shall take into consideration any resolution relating to amendments of the rules that may be passed at the meeting;

(iii) rules made under this section shall not come into operation until they have been approved by the Lord President after considering such objections, if any, as he may consider relevant.

PART II —*cont.*

(2) Rules made under paragraphs (*a*) and (*b*) of the preceding subsection shall not apply to a solicitor—

(*a*) who is in employment as solicitor to a Minister of the Crown or a government department or as an assistant or officer appointed to act under the direction of such solicitor, so far as regards moneys received, held or paid by him in the course of that employment; or

(*b*) who is in employment in an office connected with the administration of a local authority or a statutory undertaking or a designated body to which he has been appointed by the authority or the statutory undertakers or the persons responsible for the management of that body by reason of his being a solicitor, so far as regards moneys received, held or paid by him in the course of his employment in such office.

In this subsection the expression "local authority" means a county council, town council or district council or a combination of such councils, the expression "statutory undertakers" has the meaning assigned to it in the Local Government (Scotland) Act, 1947, and the expression "designated body" means any body, whether corporate or unincorporate, for the time being designated by the Council of the Society for the purposes of this section.

(3) Failure to comply with rules made under this section may be treated as professional misconduct for the purposes of Part V of the principal Act.

Relief to banks.

21.—(1) Subject to the provisions of this section, no bank shall, in connection with any transaction on any account of any solicitor kept with it or with any other bank (other than an account kept by a solicitor as trustee for a specified beneficiary), incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any moneys paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the moneys paid or credited to it:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in the preceding subsection, a bank at which a solicitor keeps a special account for clients' moneys shall not, in respect of any liability of the solicitor to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge, or otherwise against moneys standing to the credit of that account:

Provided that nothing in this subsection shall deprive a bank of any right existing at the time when the rules first made under section twenty of this Act come into operation.

PART II —*cont.*

Scottish Solicitors Guarantee Fund

Constitution of Guarantee Fund.

22.—(1) As from the appointed day there shall be constituted a fund to be called "The Scottish Solicitors Guarantee Fund" (in this Part of this Act referred to as "the Guarantee Fund") which Fund shall be vested in the Society and shall be under the control and management of the Council of the Society.

(2) Subject to the provisions of this section and of the Sixth Schedule to this Act, the Guarantee Fund shall be held by the Society for the purpose of making grants in order to compensate persons who in the opinion of the Council of the Society suffer pecuniary loss by reason of dishonesty on the part of any solicitor or any servant of any solicitor in connection with the practice of the solicitor or any trust of which the solicitor was or is a trustee, and whether or not he had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the roll of solicitors or may have ceased to practise or been suspended from practice:

Provided that no grant may be made under this section—

(*a*) in respect of a loss made good otherwise;

(*b*) in respect of a loss which in the opinion of the Council has arisen before the day appointed for the purposes of subsection (1) of this section;

(*c*) in respect of a loss which in the opinion of the Council has risen while the solicitor was suspended from practice;

(*d*) to a solicitor or his representatives in respect of a loss suffered by him or them in connection with his practice as a solicitor by reason of dishonesty on the part of a partner or servant of such solicitor; or

(*e*) unless an application for a grant is made to the Society in such manner, and within such period after the date on which the loss first came to the knowledge of the applicant, as may be prescribed by rules made under the Sixth Schedule to this Act.

(3) The decision of the Council of the Society with respect to every application for a grant shall be final, and the Council may refuse to make a grant or may make a grant only to a limited extent if they are of opinion that there has been negligence on the part of the applicant or of any person for whom he is responsible which has contributed to the loss in question.

PART II —*cont.*

The Council of the Society or any committee appointed by them may administer oaths for the purpose of inquiry into any matters which affect the making or refusal of a grant from the Guarantee Fund.

(4) The provisions of the Sixth Schedule to this Act shall have effect with respect to the Guarantee Fund, including the making of contributions thereto by solicitors and the administration and management of the Fund by the Council of the Society, but nothing in the said provisions shall apply to or in the case of a solicitor—

(*a*) who is not in practice as a solicitor; or

(*b*) who is suspended from practice as a solicitor during suspension; or

(*c*) who is in any such employment as is specified in subsection (2) of section twenty of this Act, so however that where any solicitor in such employment engages in private practice as a solicitor, the said provisions and the other provisions of this Part of this Act relating to the Guarantee Fund shall apply to him and in his case so far as regards such private practice.

Discipline and Offences

Complaints to Discipline Committee.

23.—(1) A complaint may be made to the Discipline Committee by the Council of the Society.

(2) The Council of the Society may appoint a solicitor to act as Fiscal for the purpose of investigating and prosecuting complaints.

Provisions as to employment of disqualified solicitor.

24. Any person who, whilst disqualified from practising as a solicitor by reason of having been struck off the roll of solicitors or suspended from practice as a solicitor, seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing him that he is disqualified as aforesaid, shall be guilty of an offence under the principal Act.

Provisions as to taking apprentices.

25.—(1) A solicitor shall not, without the special leave in writing of the Council of the Society, take any apprentice, unless he is in practice as a solicitor at the time and either has at some time been in continuous practice as such for a period of at least three years or is in partnership with at least one other solicitor who is and has been in practice as aforesaid.

(2) The Council of the Society may make rules as to the number of apprentices who may be taken by a solicitor or by a firm of solicitors, but such rules shall not come into operation until they have been approved by the Lord President.

PART II —*cont.*

(3) A contravention of the foregoing provisions of this section or of rules made thereunder on the part of a solicitor may be treated as an act of professional misconduct for the purposes of Part V of the principal Act.

(4) If—

(*a*) during the term of any apprenticeship either the apprentice or the solicitor has been continuously absent from the solicitor's place of business for a period of three months or longer without reasonable cause; or

(*b*) the Council of the Society are for any other reason of opinion that the indenture ought to be discharged;

the Council of the Society may, on the application either of the solicitor or of the apprentice, discharge the indenture upon such terms, if any, as they think fit, and may determine what period, if any, of service of the apprentice under the indenture shall be deemed to be good service.

If the Council of the Society determine that any of the period of service shall be deemed to be good service, the apprentice may, if within six months after the indenture was discharged as aforesaid he enters into a second indenture with another master, serve with him the period required to complete the apprenticeship.

Supplementary

Minor and consequential amendments, and repeals.

26.—(1) The amendments specified in the third column of the Seventh Schedule to this Act, being amendments of a minor or consequential nature, shall be made in the enactments specified in the first and second columns of that Schedule.

(2) The enactments specified in Part II of the Eighth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that the repeal of sections two, three and four of, and the First and Second Schedules to, the principal Act shall not take effect until a Council of the Society has been elected in accordance with a scheme approved under paragraph 6 of Part I of the Fourth Schedule to this Act.

Service of notices, etc.

27. Any notice or other document which is required or authorised under the principal Act or this Part of this Act to be given to or served on any person shall be duly given or served if it is delivered to him or left at, or sent by post to, his last-known place of business or residence.

PART II —*cont.*

Interpretation, citation and construction of Part II.

28.—(1) In this Part of this Act the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say—

" appointed day " means such day as the Secretary of State may by statutory instrument appoint, and different days may be appointed for different purposes;

" expenses of the Society " includes the expenses of the Discipline Committee so far as not otherwise defrayed and any expenses incurred by the Council of the Society in the exercise of powers or duties vested in the Council by or by virtue of this Part of this Act, and the reasonable travelling and maintenance expenses of members of the Council or of committees of the Council incurred in attending meetings of the Council or of committees thereof, or otherwise on the business of the Society;

" principal Act " means the Solicitors (Scotland) Act, 1933;

" property " includes property, whether heritable or moveable, and rights and interests in, to or over such property;

" purposes of this Act " includes purposes relating to powers or duties vested in the Society or in the Council of the Society by or by virtue of any provision of this Act;

" servant " includes an apprentice.

(2) This Part of this Act (including the Fourth, Fifth, Sixth and Seventh Schedules and Part II of the Eighth Schedule to this Act) may be cited separately as the Solicitors (Scotland) Act, 1949, and shall be construed as one with the principal Act; and the Solicitors (Scotland) Acts, 1933 and 1934, and this Part of this Act may be cited together as the Solicitors (Scotland) Acts, 1933 to 1949.

PART III

General

Citation and construction.

29.—(1) This Act may be cited as the Legal Aid and Solicitors (Scotland) Act, 1949.

(2) A reference in this Act to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any other enactment including this Act.

SCHEDULES

Section 1.

FIRST SCHEDULE

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN

PART I

Description of Proceedings

1. Civil proceedings in any of the following courts—
   (*a*) the House of Lords in the exercise of its jurisdiction in relation to appeals from the Court of Session;
   (*b*) the Court of Session;
   (*c*) the Lands Valuation Appeal Court;
   (*d*) the Scottish Land Court;
   (*e*) the sheriff court.

2. Proceedings before any person to whom a case is referred in whole or in part by any of the said courts.

3. Criminal proceedings in any of the following courts—
   (*a*) the High Court of Justiciary;
   (*b*) the sheriff court;
   (*c*) any court of summary jurisdiction within the meaning of the Summary Jurisdiction (Scotland) Act, 1908.

PART II

Excepted Proceedings

1. Proceedings wholly or partly in respect of—
   (*a*) defamation or verbal injury;
   (*b*) breach of promise of marriage;
   (*c*) the inducement of one spouse to leave or remain apart from the other.

2. Election petitions under the Parliamentary Elections Act, 1868, or the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890.

3. Proceedings in the small debt court in which liability for the debt and the amount thereof are admitted.

4. Proceedings in the sheriff court for summary removing in which liability for the debt and the amount thereof are admitted.

Section 4.

SECOND SCHEDULE

RESOURCES TO BE DISREGARDED ON APPLICATION FOR LEGAL AID

1. In taking into account the value to any person of an interest in the dwelling-house in which he resides, any sum which might be obtained by him by selling that interest or borrowing money upon the security thereof shall be disregarded.

. . . . . .

2ND SCH. —*cont.*

4. There shall be wholly disregarded—

(*a*) any death grant paid to a person under the provisions of section twenty-two of the National Insurance Act, 1946;

(*b*) any maternity grant to which a woman is entitled under section fourteen of the National Insurance Act, 1946.

5.—(1) Any such payment or part of a payment as is specified in the following provisions of this paragraph shall be disregarded up to the amount of one pound a week or, if the person in question is in receipt of more than one payment so specified, up to the said amount in the aggregate.

(2) The payments and parts of payments hereinbefore referred to are:—

(*a*) the first ten shillings and sixpence a week of any payment of sick pay received from a friendly society or trade union;

(*b*) the first ten shillings and sixpence a week of any superannuation payment or superannuation payments in respect of previous service or employment from which the recipient has retired or resigned (whether payable by a former employer or not), not being a payment or payments—

(i) on account of a pension under the Old Age Pensions Act, 1936, or under or by virtue of the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936 to 1941, or under any enactment repealed by any of those Acts, or

(ii) on account of a retirement pension under the National Insurance Act, 1946;

(*c*) any payment by way of attendance allowance under section fourteen of the National Insurance Act, 1946, and any payment by way of maternity allowance under section fifteen of that Act;

(*d*) any of the following payments, that is to say:—

(i) any payment in respect of retired pay or pension to which section sixteen of the Finance Act, 1919, applies, including any payment in respect of a dependants' allowance attached to such a pension,

(ii) any payment in respect of a disablement pension awarded under the Personal Injuries (Emergency Provisions) Act, 1939, including an increase in such a pension in respect of dependants,

(iii) any weekly payment by way of compensation under any enactment relating to workmen's compensation,

(iv) any payment by way of disablement benefit under section twelve of the National Insurance (Industrial Injuries) Act, 1946.

6. Where under subsection (4) of section four of this Act the resources of two or more persons are to be aggregated, the last foregoing paragraph shall apply to the aggregate of the resources of both or all the said persons.

Section 6.

THIRD SCHEDULE

REMUNERATION OF PERSONS GIVING LEGAL AID

1.—(1) The sums allowed by way of fees to counsel in connection with proceedings in the House of Lords or the Court of Session shall be eighty-five per cent. of the amount allowed on taxation.

(2) The sums allowed by way of fees to counsel in connection with civil proceedings in the sheriff court shall, where the expenses are taxed on the higher scale, be eighty-five per cent. of the amount allowed on taxation, and where the expenses are taxed on any other scale, be the full amount allowed on taxation.

(3) The sums allowed by way of fees to counsel in connection with criminal proceedings shall be the full amount allowed on taxation of the fees fixed by act of adjournal under subsection (2) of section thirteen of this Act or, in connection with any criminal proceedings for the conduct of which an inclusive fee is so fixed, shall be that fee.

(4) The sums allowed by way of fees to counsel in any other case shall be the full amount allowed on taxation of the fees fixed by act of sederunt under subsection (2) of the said section thirteen.

2.—(1) The sums allowed by way of remuneration to a solicitor in connection with proceedings in the House of Lords or the Court of Session shall be the full amount allowed on taxation on account of outlays and eighty-five per cent. of the amount so allowed on account of fees.

(2) The sums allowed by way of remuneration to a solicitor in connection with civil proceedings in the sheriff court shall, where the expenses are taxed on the higher scale, be the full amount allowed on taxation on account of outlays, and eighty-five per cent. of the amount so allowed on account of fees, and where the expenses are taxed on any other scale, be the full amount allowed on taxation, whether on account of outlays or of fees.

(3) The sums allowed by way of remuneration to a solicitor in connection with criminal proceedings shall be the full amount allowed on taxation on account of outlays and the full amount so allowed of the fees fixed by act of adjournal under subsection (2) of the said section thirteen or, in connection with any criminal proceedings for the conduct of which an inclusive fee is so fixed, shall be that fee.

(4) The sums allowed by way of remuneration to a solicitor in respect of his being available and of his giving legal aid in a court of summary jurisdiction in pursuance of such arrangements as are mentioned in paragraph (*a*) of the proviso to subsection (3) of section six of this Act shall be such as may be determined under the scheme made under section eight of this Act.

(5) The sums allowed by way of remuneration to a solicitor in connection with any other proceedings in any court or tribunal shall be the full amount allowed on taxation on account of outlays and the full amount so allowed of the fees fixed by act of sederunt under subsection (2) of the said section thirteen.

(6) The sums allowed by way of remuneration to a solicitor in connection with the giving of legal aid under section five of this Act or with the giving of legal advice shall be such as may be determined under the scheme made under section eight of this Act.

3RD SCH. —*cont.*

3. For the purposes of paragraph 1 of this Schedule counsel's fees shall be taxed as if they had been paid by the solicitor, and shall be treated as outlays for the purposes of the last foregoing paragraph.

4. The expenses incurred in connection with civil proceedings in the sheriff court shall, for the purposes of this Schedule, be taxed on the like scale as applies to the expenses awarded in those proceedings as between the parties thereto:

Provided that if no award of expenses is made, or expenses are awarded on a scale other than the scale which, apart from the special circumstances of the particular proceedings, would be applicable, the expenses shall, for the purposes aforesaid, be taxed on such scale as the sheriff, on application made to him, may direct.

5. Expenses shall be taxed for the purposes of this Schedule according to the ordinary rules and as between solicitor and client:

Provided that no question shall be raised as to the propriety of any act for which prior approval was obtained as required by regulations.

6. Where regulations so provide, an amount, whether on account of outlays or fees, fixed by agreement between the Law Society and the solicitor to whom such amount is payable in the first instance out of the legal aid fund shall for the purposes of this Schedule be treated as if it were an amount allowed on taxation:

Provided that this paragraph shall not have effect in relation to any amount if any person to or by whom such amount is payable in whole or in part requires it to be fixed by taxation.

FOURTH SCHEDULE

Section 18.

PROVISIONS RELATING TO THE LAW SOCIETY OF SCOTLAND

PART I

General

Objects of Society.

1. In addition to the other powers and duties vested in the Society by this Act, the objects of the Society shall include the promotion of the interests of the profession of solicitors in Scotland and the interests of the public in relation to that profession, and the doing of all such other things as are incidental or conducive to the exercise of the said powers and duties and the attainment of the said objects.

Annual subscription.

2. There shall be paid to the Society by every member of the Society, along with his application for a practising certificate, an annual subscription of one pound, or such other sum as shall be fixed from time to time by the Society in general meeting:

Provided that until the day appointed for the purposes of section nineteen of this Act the annual subscription payable by each member of the Society shall be one pound or such other sum as shall be fixed from time to time by the Society in general meeting and shall be due on such date as may be determined by the Council.

Powers of Council of Society.

3.—(1) Subject to the provisions of this Act, the business of the Society (including the management of their income and property) shall be conducted by a Council to be elected in manner hereinafter provided. The Council may act for and in name of the Society in any matter other than a matter which under this Part of this Act is to be determined by the Society in general meeting.

4TH SCH. —*cont.*

(2) The Council may, without prejudice to any other powers competent to them, take into consideration and make recommendations or representations with regard to any matters which are in their opinion of importance to solicitors in Scotland.

(3) Any deed to which the Society are a party shall be held to be validly executed on behalf of the Society if it is sealed with the common seal of the Society and subscribed on behalf of the Society by two members of the Council and the secretary of the Society, or other person appointed by the Council to act for the secretary, without attestation by witnesses.

Temporary provisions as to Council and meetings of Society.

4.—(1) Until the election of a Council by the Society in accordance with a scheme approved by the Society under paragraph 6 of this Part of this Schedule, the General Council shall act as the Council of the Society and the chairman, vice-chairman and clerk of the General Council shall act as the chairman, vice-chairman and secretary of the Society respectively.

(2) Until a scheme is approved by the Society under paragraph 6 of this Part of this Schedule the provisions of Part II of this Schedule shall have effect with respect to meetings of the Society.

Scheme making permanent provision as to Council meetings and proceedings, &c. of Society.

5.—(1) Immediately after the passing of this Act the General Council, as the Council of the Society, shall prepare a scheme with respect to—

(*a*) the constitution, election and proceedings of the Council of the Society;

(*b*) the meetings of the Society;

(*c*) the appointment of a chairman, vice-chairman, secretary and other officers and servants of the Society; and

(*d*) the appointment of committees and the constitution thereof;

and such a scheme may——

(i) confer power on the Council of the Society to admit as honorary members of the Society (having no right to vote at meetings of the Society and not being liable to any annual subscription) persons who have ceased to be practising solicitors;

(ii) contain such other provisions with respect to the administration, management and proceedings of the Society as are considered necessary or proper and are not inconsistent with any of the provisions of the principal Act or this Act.

(2) A scheme prepared under this paragraph shall provide for the admission, on application made in that behalf and on payment of the annual subscription, as a member of the Society of any solicitor who, by virtue of the provisions of subsection (4) of section nineteen of this Act, is exempted from taking out a practising certificate.

Provisions as to consideration and passing of scheme.

6.—(1) The General Council, as the Council of the Society, shall within six months after the passing of this Act send to each member of the Society a copy of the scheme prepared by them, together with a notice drawing attention to the rights of members under this paragraph with regard to the submission of amendments or alternative schemes.

(2) Any member of the Society shall within two months of receiving a copy of the said scheme from the Council send to the Council a copy of any amendment thereof or of any alternative scheme which he proposes to move at the general meeting hereinafter mentioned.

4TH SCH. —*cont.*

(3) On the expiration of the said period of two months the Council shall forthwith convene a general meeting of the Society to consider the scheme prepared by them and any amendments thereof and any alternative schemes sent in by members, and shall send to each member with the notice of the meeting a copy of such amendments and alternative schemes.

(4) On the scheme prepared by the Council, whether as submitted or as amended, or any alternative scheme, being approved by a resolution passed by a majority of the members present in person or by proxy at the meeting or at any adjournment thereof, the provisions of the scheme as approved shall have effect as if enacted in this Act.

(5) Notwithstanding the provisions of sub-paragraph (2) of this paragraph the chairman of the meeting may accept a motion relating to any amendment of a scheme before the meeting if he considers the amendment to be of a minor or drafting character.

(6) The accidental omission to send to any member a copy of the scheme or the notice required to be sent therewith or a copy of any amendment or alternative scheme or the non-receipt by any member of any such copy or notice as aforesaid shall not invalidate the proceedings at the said meeting or the scheme approved thereat.

Alternative scheme.

7. If the General Council, as the Council of the Society, fail to send to members of the Society within six months after the passing of this Act copies of a scheme prepared by them, any of the Societies named in the Second Schedule to the principal Act may send to the Council a scheme with respect to the matters aforesaid and the provisions of the last preceding paragraph (including the obligations imposed on the Council thereby) shall apply with respect to a scheme sent in by any of the said Societies as they apply with respect to a scheme prepared by the Council.

Alteration of approved scheme.

8. The Society may, by a resolution passed by a majority consisting of not less than two-thirds of the members of the Society present in person or by proxy at a meeting of the Society of which due notice specifying the intention to propose the resolution has been given, or at any adjournment thereof, rescind, add to or amend any of the provisions of the said approved scheme.

Provisions as to property of Society.

9.—(1) The Society may accept any gift of property for the purposes of the Society, and may accept, hold and administer any gift of property or hold as trustees any property for any purpose which the Society consider to be for the benefit of solicitors in Scotland or their dependants or employees or any substantial body of such solicitors or dependants or employees.

(2) Save as otherwise provided in this Act or as respects any trust constituted for a special purpose, the expenses of the Society shall be defrayed out of the subscriptions and other income received by the Society or the Council thereof and out of other property belonging to the Society.

(3) The Society may purchase or otherwise acquire land for any of the purposes of this Act, and may sell, lease or otherwise dispose of the same as seems proper to them.

(4) The Society may borrow for any of the purposes of this Act in such manner and on such security as they may determine.

4TH SCH. —*cont.*

(5) The Society may invest any moneys not immediately required to meet expenses and other outlays of the Society in any investment in which trustees in Scotland are by law authorised to invest, but nothing in this sub-paragraph shall prevent the investment of any moneys forming part of any property held in trust for a special purpose in any class of investment authorised by the deed constituting the trust.

PART II

Temporary provisions with respect to meetings of the Society

1. The Chairman of the General Council may whenever he thinks fit convene a general meeting of the Society, and a general meeting shall be convened by him on the instructions of the General Council or on a requisition signed by not less than twenty members of the Society. The requisition must state the objects of the meeting, and must be deposited with the Clerk to the General Council, and may consist of several documents in like form, each signed by one or more requisitionists.

2. Twenty-one days' notice at the least (exclusive of the day on which the notice is served but inclusive of the day for which the notice is given) specifying the place, the day and the hour of meeting and the general nature of the business shall be given to each member of the Society. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

3. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Twenty members personally present shall be a quorum.

4. The Chairman of the General Council shall preside as chairman at a general meeting. If at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

5. The chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, seven days' notice of the adjourned meeting shall be given. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote, and, unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Society, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

4TH SCH. —*cont.*

7. If a poll is duly demanded it shall be taken at once in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

8. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

9. On a show of hands every member present in person shall have one vote.

10. On a poll votes may be given either personally or by proxy.

11. The instrument appointing a proxy shall be in writing under the hand of the appointer. A proxy must be a member of the Society.

12. The instrument appointing a proxy shall be deposited with the Clerk to the General Council not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

13. Where a notice of a meeting is sent by the Society by post, service of the notice shall be deemed to have been effected at the expiration of twenty-four hours after the letter containing the notice is posted.

FIFTH SCHEDULE

Section 19.

PROVISIONS WITH RESPECT TO PRACTISING CERTIFICATES AND THE SUSPENSION OF SOLICITORS FROM PRACTICE IN CASES OF SEQUESTRATION, OF GRANTING A TRUST DEED FOR CREDITORS OR OF INSANITY

Applications for practising certificates.

1.—(1) Subject to the provisions of this Schedule, the Council of the Society may make rules with respect to—

(*a*) applications for, and the issue of, practising certificates; and

(*b*) the keeping of a register of applications for practising certificates and of certificates issued, which register shall be open for inspection during office hours without payment.

(2) The making of a false statement by a solicitor in an application for a practising certificate may be treated for the purposes of Part V of the principal Act as professional misconduct on the part of that solicitor, unless he proves that the statement was made without intention to deceive.

(3) If in any case, not being a case to which the next succeeding paragraph applies, the registrar on application duly made to him refuses or neglects to issue a practising certificate, the applicant may apply to the Court, who may make such order in the matter as they may think fit.

Discretion of registrar in special cases to refuse practising certificate or to issue certificate subject to conditions.

2.—(1) Subject to the provisions of this paragraph, where a solicitor applies for a practising certificate in any of the following cases, that is to say—

(*a*) when for twelve months or more he has ceased to hold a practising certificate in force; or

(*b*) after his estate has been sequestrated or he has granted a trust deed for behoof of creditors, whether he has obtained his discharge or not; or

5TH SCH. —*cont.*

(*c*) when, having been struck off the roll of solicitors or suspended from practice, he has been restored to the roll or his suspension has expired, as the case may be; or

(*d*) not having held a practising certificate in force within the twelve months next following the date of his admission to the roll of solicitors; or

(*e*) without having paid in full any expenses for which he has been found liable under paragraph 5 of the Sixth Schedule to this Act or any fine imposed on him or any expenses ordered to be paid by him under Part V of the principal Act;

he shall, unless the registrar otherwise orders, give to the registrar at least six weeks before the application is made notice of his intention to make the application, and the registrar may in his discretion grant or refuse the application or decide to issue a certificate to the applicant subject to such terms and conditions as the registrar may in his discretion think fit; and where he decides to issue a certificate subject to terms and conditions may, if he thinks fit, postpone the issue of the certificate pending the hearing and determination of an appeal under this paragraph:

Provided that where, having regard to certain facts, a discretion becomes exercisable by the registrar in any of the cases mentioned in heads (*a*), (*b*), (*c*) and (*d*) of this sub-paragraph, as soon thereafter as a practising certificate has been issued in the exercise of such discretion to the applicant free of conditions those facts shall cease to operate so as to require such solicitor to give the notice mentioned in this paragraph or to vest any discretion in the registrar.

(2) Within fourteen days after being notified of the decision of the registrar, the applicant may appeal against such decision to the Court, who may affirm the decision of the registrar or may direct him to issue a certificate to the applicant on such terms and conditions, if any, as the Court may think fit or may make such other order as shall be just.

Bankruptcy of solicitor.

3.—(1) Upon the estate of a solicitor being sequestrated or upon a solicitor granting a trust deed for behoof of his creditors, any practising certificate then held by him shall cease to have effect, and, subject to the provisions of this paragraph, he shall be suspended from practice as a solicitor until he has obtained his discharge.

(2) It shall be the duty of a solicitor, upon his estate being sequestrated or his granting a trust deed for behoof of his creditors, to intimate the same forthwith in writing to the registrar, and it shall also be the duty of the trustee on the sequestrated estate or acting under the trust deed, immediately on his appointment, to intimate his appointment in writing to the registrar.

(3) A solicitor may at any time while he is suspended from practice under this paragraph apply to the registrar to terminate the suspension, and the registrar in his discretion may by order terminate the suspension unconditionally or subject to such terms and conditions as he may think fit or may refuse the application.

5TH SCH. —*cont.*

(4) If the registrar refuses the application or terminates the suspension subject to any terms or conditions, the solicitor may appeal against that decision to the Court, who may either affirm the decision of the registrar, or vary any terms or conditions imposed by the registrar, or terminate the suspension unconditionally or subject to such terms and conditions as they may think fit.

(5) If a solicitor suspended from practice under the provisions of this paragraph ceases to be so suspended at any time during the period for which the practising certificate held by him at the time of suspension would otherwise have continued in force, the certificate shall thereupon again have effect.

Insanity of a solicitor.

4. Upon an order or warrant being granted for the detention of a solicitor as a lunatic, or upon a curator bonis being appointed upon the estate of a solicitor, any practising certificate then held by the solicitor shall cease to have effect, and no practising certificate shall be issued to a solicitor while any such order or warrant remains in force or while his estate is under the control of a curator bonis:

Provided that if the order or warrant ceases to be in force or his estate ceases to be under such control at any time during the period for which the practising certificate would otherwise have continued in force, the certificate shall thereupon again have effect.

Period of validity of practising certificates.

5.—(1) Every practising certificate issued during the month of November in any year shall bear the date of, and have effect for all purposes from, the first day of November in that year, but save as aforesaid every practising certificate shall bear the date of, and take effect on, the day on which it is issued.

(2) Subject to the provisions of this Act, every certificate shall continue in force from the day from or on which it has or takes effect in accordance with the provisions of this paragraph until the thirty-first day of October next following the date of issue thereof (both dates inclusive) and shall then expire:

Provided that if the holder of a certificate is struck off the roll of solicitors such certificate shall forthwith expire.

Law list to be prima facie evidence of solicitor holding practising certificate.

6. Any list purporting to be issued by authority of the Council of the Society and to contain the names of solicitors in Scotland who have before the first day of December in any year obtained practising certificates for the period of twelve months from the first day of November in that year shall, until the contrary is proved, be evidence that the persons named therein as solicitors holding such certificates for the period then current are solicitors holding such certificates. The absence from such a list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as a solicitor under a certificate for the current period, but in the case of any such person an extract from the roll of solicitors certified as correct by the registrar shall be evidence of the facts appearing in the extract.

Section 22.

SIXTH SCHEDULE

PROVISIONS WITH RESPECT TO THE SCOTTISH SOLICITORS GUARANTEE FUND

Contributions by solicitors to Guarantee Fund.

1.—(1) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund by every solicitor in respect of each year during which or part of which he is in practice as a solicitor, along with his application for a practising certificate, a contribution (in this Schedule referred to as an "annual contribution") not exceeding the sum of five pounds:

Provided that the sum payable by a solicitor in respect of the year in which he first commences to practise after admission, and in respect of each of the two years immediately following, shall be one-half of the annual contribution.

(2) The Council of the Society shall, not later than the thirty-first day of July in each year, fix the amount, if any, of the annual contribution to be paid in respect of the next ensuing year.

(3) No annual contribution shall be payable by a solicitor so long as the amount of the Guarantee Fund, including the value of all investments forming part of the Fund and after providing for all outstanding liabilities, is in the opinion of the Council of the Society not less than the sum of one hundred thousand pounds or such other sum as the Council may from time to time determine.

(4) If at any time the Council of the Society are of opinion that the liabilities of the Guarantee Fund render it expedient in order to secure the financial stability of the Fund, the Council may, by a resolution of which not less than ten days' previous notice in writing has been given to each member of the Council, impose upon every solicitor a contribution (in this Schedule referred to as a "special contribution") of the amount specified in the resolution, and the special contribution shall be payable to the Society in one sum, or, if the Council so determine, by instalments on or before such date or dates as may be specified in the resolution:

Provided that—

(*a*) no special contribution shall be payable by a solicitor in the year in which he first commences to practise after admission or in either of the two years immediately following;

(*b*) the amount payable by way of special contribution by a solicitor shall not in any year exceed the sum of ten pounds.

(5) No annual contribution and no special contribution shall be payable by any solicitor who is in the employment of another solicitor or of a firm of solicitors and who does not engage in practice as a solicitor on his own account.

(6) Without prejudice to any other method of recovering contributions payable to the Society under this Schedule, whether annual

6TH SCH. —*cont.*

or special, a practising certificate shall not be issued to a solicitor except on production of evidence of payment of the contributions (if any) due by him to the Fund on or before the issue of the certificate.

(7) In this Schedule the expression "year" means the period of twelve months commencing on the first day of April or such other day as may be fixed by the Council of the Society.

Provisions as to investment, borrowing, audit and separation of funds.

2.—(1) Moneys not immediately required to meet sums payable out of the Guarantee Fund may be invested by the Society in any investments in which trustees in Scotland are by law authorised to invest.

(2) The Society may borrow money for the purposes of the Guarantee Fund in such manner and on such security as they may determine, so, however, that the total sum due at any time in respect of any such loans shall not exceed twenty thousand pounds.

(3) The accounts of the Guarantee Fund shall be made up annually for the year ending on the thirty-first day of March or on such other day as may be fixed by the Council and shall be audited by an auditor appointed by the Society. As soon as the audit is completed the audited accounts and the auditor's report thereon shall be submitted to the Council of the Society and a copy of the audited accounts and of the auditor's report shall be sent to the Lord Advocate and to every solicitor who is contributing to the Fund.

(4) All investments and other moneys forming part of the Guarantee Fund, and the books and accounts relating to that Fund, shall be kept separate from the other investments and moneys, books and accounts of the Society, and the investments and other moneys forming part of the Guarantee Fund shall not be liable for any obligations, debts, or liabilities incurred by the Society or the Council of the Society in relation to any business of the Society other than the business of the Guarantee Fund, nor shall the investments and other moneys of the Society held for purposes other than those relating to the Guarantee Fund be liable for any obligations, debts, or liabilities incurred by the Society or the Council of the Society in relation to the Guarantee Fund.

Power of Society to enter into contracts of insurance.

3.—(1) The Society shall have power to enter into a contract of insurance with any person, body of persons, or corporation authorised by law to carry on insurance business for guaranteeing the sufficiency of the Guarantee Fund or for any other purpose in relation to the Fund.

(2) Any such contract of insurance may be entered into in relation to solicitors generally or in relation to any solicitor or solicitors named therein.

(3) No person other than the Society shall have any right of action against the person, body or corporation with whom any such contract of insurance was entered into or have any right to any moneys payable thereunder.

6TH SCH. —*cont.*

Provisions as to applications for grants, &c.

4.—(1) Every application for a grant from the Guarantee Fund shall be in such form as may be prescribed by rules made under this Schedule and shall be accompanied, if so required by the Council of the Society, by a statutory declaration, and the applicant shall produce to the Council such documents and other evidence as they may demand.

(2) The Council of the Society may, as a condition of making a grant out of the Guarantee Fund, require the person to whom the grant is made to assign to the Society at the expense of the Society any rights and remedies competent to him against the solicitor in question, his partner or servant, or any other person in respect of the loss.

(3) A grant from the Guarantee Fund may, in the discretion of the Council of the Society, be paid in one sum or in such instalments as the Council may determine.

(4) The Council of the Society may make rules with regard to the procedure to be followed in giving effect to the provisions of this Act relating to the Guarantee Fund, including matters to be prescribed thereunder and also with respect to any matters incidental, ancillary or supplemental to those provisions or concerning the administration, management or protection of the Guarantee Fund.

Power of Council of Society to have affairs of solicitors investigated.

5.—(1) If the Council of the Society have reasonable cause to believe that a solicitor or a servant of his has been guilty of any such dishonesty as is mentioned in subsection (2) of section twenty-two of this Act, they may require the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council, and may take possession of all books, accounts, deeds, securities, papers and other documents in the possession or control of such solicitor or his firm or relating to any trust of which he is a sole trustee or is co-trustee only with a partner or servant of his or with more than one of such persons.

(2) If any person having possession or control of any such books, accounts, deeds, securities, papers and other documents refuses or fails forthwith after being required by the Council so to do to produce or deliver the same or cause the same to be produced or delivered in manner aforesaid, the Council may apply to the Court for an order, and the Court may on such application make an order upon such person to produce or deliver the same or cause the same to be produced or delivered in manner aforesaid within such time as the Court may order.

(3) Upon taking possession of any such books, accounts, deeds, securities, papers and other documents, which have been produced or delivered to the Council, the Council shall serve upon such solicitor and every person from whom they shall have been received a notice giving particulars and the date of taking possession thereof.

(4) Every requirement and notice made or given under this paragraph shall be in writing under the hand of such person as may be

6TH SCH. —*cont.*

appointed by the Council for the purpose, and the Council may serve any such requirement or notice on any solicitor or other person either personally or by forwarding it by registered letter addressed to his last-known place of business or residence.

(5) Within fourteen days after a notice under sub-paragraph (3) of this paragraph has been served in accordance with the last preceding sub-paragraph, the solicitor or other person upon whom such notice has been served may apply to the Court for an order directing the Council to return such books, accounts, deeds, securities, papers and other documents to the person or persons from whom they were received by the Council or to such other person or persons as the applicant may require. On the hearing of such application the Court may make the order applied for or such other order with respect to the matter as they may think fit.

(6) If no application shall be made to the Court in accordance with the last preceding sub-paragraph or if the Court on any such application shall direct that the books, accounts, deeds, securities, papers and other documents shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person or persons to whom the same belong and may deal with the same in accordance with the directions of such person or persons.

Control of banking accounts.

6. If the Council are satisfied that a solicitor or a servant of his has been guilty of any such dishonesty as is mentioned in subsection (2) of section twenty-two of this Act, they may apply to the Court for an order and the Court may on such application make an order that no payment shall be made without the leave of the Court by any banker named in the order out of any banking account in the name of such solicitor or his firm.

SEVENTH SCHEDULE

Section 26.

MINOR AND CONSEQUENTIAL AMENDMENTS

Session and Chapter	Short Title	Nature of Amendment
23 & 24 Geo. 5. c. 21.	The Solicitors (Scotland) Act, 1933.	In section nine, in paragraph (ii) after the words "six "months", in both places where they occur, there shall be inserted the words "or "such longer period as the "registrar may in any parti- "cular case on cause shown "fix"; In section nineteen, for the words "on the expiry of six "months from the date of "the application" there shall be substituted the words

7TH SCH. —*cont.*

Session and Chapter	Short Title	Nature of Amendment
23 & 24 Geo. 5. c. 21—*cont.*	The Solicitors (Scotland) Act, 1933—*cont.*	" only on the solicitor satisfying the Discipline Committee that he has made adequate arrangements with respect to the business which he has then in hand "; In section twenty-six, at the end of subsection (2) there shall be added the words " or may take such further or other action as the Court think fit "; In section twenty-seven, in subsection (1), after the words " of professional misconduct" where they first occur there shall be inserted the words " or if the person making the complaint fails to comply with any of the rules made under section thirty-three of this Act " ; In section twenty-eight, in subsection (1) after the words " investigating the complaint " there shall be inserted the words " or in such portion thereof as the Committee think fit ", and in subsection (2) after the words " due by him " there shall be inserted the words " to them and, where a finding relating to expenses has been made by the Committee in favour of the complainer, authorising the complainer to recover from such solicitor the expenses found due by the solicitor to the complainer "; In section thirty-four, after the words " competent for " there shall be inserted the words " the Lord Advocate and for", and for the words " is prima facie " there shall be substituted the words " may have been "; In section thirty-nine, the words " either directly or indirectly for or in expectation of any fee, gain or reward " shall be omitted, and after the word " Act " there shall be inserted the

7TH SCH. —*cont.*

Session and Chapter	Short Title	Nature of Amendment
23 & 24 Geo. 5. c. 21—*cont.*	The Solicitors (Scotland) Act, 1933—*cont.*	words " unless he proves that " he so acted without receiving " or without expectation of " any fee, gain or reward, " directly or indirectly "; In section fifty, at the end of the definition of " Society," there shall be inserted the words " but shall not include the " Law Society of Scotland " established under the Solici- " tors (Scotland) Act, 1949 ".

EIGHTH SCHEDULE

Section 17 (5)

ENACTMENTS REPEALED

PART I

Year or Session and Chapter	Subject matter or Title	Extent of Repeal
1424, c. 24. ...	Act of the Parliament of Scotland " Anent billis of complayntis ".	The whole Act so far as unrepealed.
1587, c. 57 ...	Act of the Parliament of Scotland " For the furtherance and furthsetting of the criminall justice ower all the Realme."	In section (10) the words from " And that all and quhatsumeuir liegis " to the end of the section.
56 & 57 Vict. c. 22.	The Appeal (Forma Pauperis) Act, 1893.	The whole Act.
7 Edw. 7. c. 51	The Sheriff Courts (Scotland) Act, 1907.	Section fifty-one. In the First Schedule, rules one hundred and fifty-two to one hundred and sixty-nine.

PART II

Section 26 (2).

Session and Chapter	Short Title	Extent of Repeal
23 & 24 Geo. 5. c. 21.	The Solicitors (Scotland) Act, 1933.	Sections two to six; and the First and Second Schedules.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Parliamentary Elections Act, 1868	31 & 32 Vict. c. 125.
Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890	53 & 54 Vict. c. 55.
Appeal Forma Pauperis Act, 1893	56 & 57 Vict. c. 22.
Sheriff Courts (Scotland) Act, 1907	7 Edw. 7. c. 51.
Summary Jurisdiction (Scotland) Act, 1908 ...	8 Edw. 7. c. 65.
Finance Act, 1919	9 & 10 Geo. 5. c. 32.
Solicitors (Scotland) Act, 1933	23 & 24 Geo. 5. c. 21.
Old Age Pensions Act, 1936	26 Geo. 5 & 1 Edw. 8. c. 31.
Personal Injuries (Emergency Provisions) Act, 1939.	2 & 3 Geo. 6. c. 82.
Statutory Instruments Act, 1946	9 & 10 Geo. 6. c. 36.
National Insurance (Industrial Injuries) Act, 1946	9 & 10 Geo. 6. c. 62.
National Insurance Act, 1946	9 & 10 Geo. 6. c. 67.
Local Government (Scotland) Act, 1947 ...	10 & 11 Geo. 6. c. 43.
National Assistance Act, 1948	11 & 12 Geo. 6. c. 29.