

Solicitors (Scotland) Act 1976

1976 CHAPTER 6

An Act to make provision as to the powers of the Law Society of Scotland to intervene in the professional practice and conduct of solicitors; to make provision for the appointment of a lay observer to examine the Society's treatment of complaints about solicitors and the appointment of lay members of the Scottish Solicitors Discipline Tribunal; to extend the powers of that Tribunal; to make provision as to the indemnity of solicitors against professional liability; to amend the Solicitors (Scotland) Acts 1933 to 1965; and for connected purposes. [25th March 1976]

BE IT ENACTED by the Queen'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

PROFESSIONAL PRACTICE AND CONDUCT OF SOLICITORS

Extension and alteration of power of Society to deal with property under the control of certain solicitors

Power of Council of Society to deal with property in hands of solicitor dying or ceasing to practise.

1. Where a solicitor who is practising as a solicitor under his own name or as a sole solicitor under a firm name dies or ceases to practise for any reason other than being struck off the roll of solicitors or being suspended from practice and the Council of the Society are not satisfied that suitable arrangements have been made for making available to his clients or to some other

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solicitor or solicitors instructed by his clients or on their behalf—

(*a*) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is sole trustee or co-trustee only with one or more of his clerks or servants; and

(*b*) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid;

the provisions of paragraphs 5 and 6 of Schedule 6 to the Act of 1949 (which relate to the production or delivery of documents by and to payments out of any bank account in the name of a solicitor in certain circumstances) shall apply in relation to any such solicitor notwithstanding that the Council may not have reasonable cause to believe that he has been guilty of any such dishonesty as is mentioned in subsection (2) of section 22 of that Act.

Power of Society to deal with client accounts of solicitor incapacitated.

2.—(1) Where the Council of the Society are satisfied that a solicitor who is practising as a solicitor under his own name or as a sole solicitor under a firm name is incapacitated by illness or accident to such an extent as to be unable to operate on or otherwise deal with any client account in name of the solicitor or his firm and no other arrangements acceptable to the Council have been made, the right to operate on or otherwise deal with such account shall notwithstanding any enactment or any rule of law to the contrary vest solely in the Society so long, but only so long, as the Council are satisfied that such incapacity and absence of other acceptable arrangements continues.

(2) In this section "client account" has the same meaning as in section 3 of the Act of 1965.

Society entitled to recover expenses incurred.

3. At the end of section 3 of the Act of 1965 (on death of a solicitor practising on his own account Society to deal with banking accounts of practice) the following subsection shall be inserted—

"(3) In a case where the Society have operated on or otherwise dealt with a client account under this section the Society shall be entitled to recover from the estate of the solicitor who has died such reasonable expenses as the Society have thereby incurred."

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Extension of power of Council to apply for appointment of judicial factor on estate of solicitor.

4. In section 15 of the Act of 1958 (power of Council to apply for appointment of judicial factor on estate of solicitor in certain cases) in paragraph (*b*) the word " either " shall be omitted and at the end of sub-paragraph (ii) there shall be inserted the word " or " and the following sub-paragraph—

" (iii) there is reasonable ground for apprehending that a claim on the Guarantee Fund may ensue,".

Extension of power of Council to make rules regarding certain accounts.

1969 c. 50.

1963 c. 16.

1967 c. 81.

5.—(1) The duties to make rules imposed on the Council of the Society by section 20(1)(*a*) of the Act of 1949 (Council of Society to make rules with respect to bank accounts etc.) shall be duties to make rules requiring solicitors to open and keep accounts only with the Bank of England, a Trustee Savings Bank within the meaning of section 95 of the Trustee Savings Bank Act 1969, the National Savings Bank and any company as to which the Secretary of State is satisfied that it ought to be treated as a banking company or as a discount company for the purposes of the Protection of Depositors Act 1963 as amended by the Companies Act 1967 ; and the rules may specify the location of the banks' or companies' branches at which the accounts are to be kept.

(2) In section 20(1) of the Act of 1949 (Council of Society to make rules with respect to bank accounts etc.)—

(*a*) after paragraph (*a*) there shall be inserted the following paragraph—

" (*aa*) as to the opening and keeping by solicitors of—

(i) a deposit or share account with a building society designated under section 1 of the House Purchase and Housing Act 1959, or

(ii) an account showing sums on loan to a local authority,

being in either case for a client whose name is specified in the title of the account ".

(*b*) at the end there shall be inserted the following—

" In this subsection " local authority " means a local authority within the meaning of the Local Government Act 1972 or the Local Government (Scotland) Act 1973 ".

(3) Section 3(2) of the Act of 1965 shall have effect as if there were included in the meaning of client account a reference to the accounts mentioned in section 20 of the Act of 1949 as amended by subsections (1) and (2) above.

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Power of Council in investigating complaints.

6.—(1) If a complaint is made to the Society that there has been undue delay on the part of a solicitor in dealing with any matter in which he or his firm is or has been concerned in a professional capacity or any matter relating to a trust of which he is or was the sole trustee or co-trustee only with one or more of his partners, clerks or servants, and the Council are of opinion that the delay ought to be investigated, they may by notice in writing at any time and from time to time require the solicitor to give an explanation of the delay.

(2) The notice given by the Council may specify a period, not being less than twenty-one days, within which they require an explanation to be furnished and if within that period the solicitor does not reply or fails to furnish an explanation which the Council regard as sufficient and satisfactory and he is so informed in writing, the provisions of paragraphs 5 and 6 of Schedule 6 to the Act of 1949 (which relate to the production or delivery of documents by and to payments out of any banking account in the name of a solicitor or his firm in certain circumstances) shall apply in relation to that solicitor and his firm but only in so far as they relate to documents or payments connected with the matter complained of and shall so apply notwithstanding that the Council may not have reasonable cause to believe that the solicitor has been guilty of any such dishonesty as is mentioned in subsection (2) of section 22 of that Act.

Lay observer

Investigation by lay observer of Society's treatment of complaints.

7.—(1) The Secretary of State, if he thinks fit, may, after consultation with the Lord President, appoint a person (in this section referred to as " the lay observer ") to examine any written allegation made by or on behalf of a member of the public concerning the Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf.

(2) No solicitor or advocate shall be appointed as the lay observer.

(3) The lay observer shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

(4) The Secretary of State may give general directions to the lay observer about the scope and discharge of his functions, and shall publish any such directions.

(5) The Society shall consider any report or recommendation which it receives from the lay observer and shall notify him of any action which it has taken in consequence.

(6) The Secretary of State may appoint staff for the lay observer.

(7) Remuneration for the lay observer and his staff and any other expenses of the lay observer shall be paid out of money provided by Parliament.

(8) In determining the terms of employment and remuneration of the lay observer and his staff, the number of his staff and any amount payable by way of expenses under subsection (7) above the Secretary of State shall act only with the approval of the Minister for the Civil Service.

(9) The Society shall furnish the lay observer with such information as he may from time to time reasonably require.

(10) The Secretary of State shall direct the submission to him of an annual report by the lay observer on the discharge of the functions conferred on him by this section.

(11) The Secretary of State shall lay a copy of any report under subsection (10) before each House of Parliament.

(12) In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership) there shall be inserted at the appropriate place in alphabetical order the entry " Lay observer appointed under section 7 of the Solicitors (Scotland) Act 1976 ". 1975 c. 24.

Indemnity of Solicitors against Professional Liability

Arrangements for professional indemnity.

8.—(1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors against any class of professional liability and the rules may for the purpose of providing such indemnity do all or any of the following things, namely—

(*a*) authorise or require the Society to establish and maintain a fund or funds;

(*b*) authorise or require the Society to take out and maintain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business; 1974 c. 49.

(*c*) require solicitors or any specified class of solicitors to take out and maintain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business.

(2) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of the rules.

(3) Without prejudice to the generality of subsections (1) and (2) above, the rules—

(*a*) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;

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(*b*) may provide for the management, administration and protection of any fund maintained by virtue of subsection (1)(*a*) above and require solicitors or any class of solicitors to make payments to any such fund;

(*c*) may require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (1)(*b*) above;

(*d*) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (1)(*c*) above;

(*e*) may authorise the Society to determine the amount of any payments required by the rules subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;

(*f*) may specify circumstances in which, where a solicitor for whom indemnity is provided has failed to comply with the rules, proceedings in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply may be taken against him by the Society or by insurers;

(*g*) may specify circumstances in which solicitors are exempt from the rules;

(*h*) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and

(*i*) may contain incidental, procedural or supplementary provisions.

(4) Failure to comply with rules made under this section may be treated as professional misconduct for the purposes of the provisions of the Act of 1958 relating to discipline, and any person may make a complaint in respect of that failure to the Scottish Solicitors Discipline Tribunal.

(5) In this section "professional liability" means any civil liability incurred by a solicitor or former solicitor in connection with his practice or in connection with any trust of which he is or formerly was a trustee.

Apprentices

Limitation on taking apprentices by certain solicitors.

9. In section 25 of the Act of 1949 (provisions as to taking apprentices)—

(*a*) after subsection (1) there shall be inserted the following subsection—

"(1A) If the Council of the Society after such inquiry as they may think fit as regards the practice

of a solicitor decide that he would be unable to fulfil the proper obligations of the master in a contract for a legal apprenticeship either in relation to a particular application or generally they shall intimate their decision to the solicitor and the solicitor notwithstanding that he satisfies the provisions of subsection (1) of this section shall not thereafter take any apprentice without the special leave in writing of the Council." ;

(*b*) at the end of the section there shall be inserted the following subsection—

" (5) Any person aggrieved by a decision of the Council under subsection (1A) of this section may, within twenty-one days of the date of intimation of the decision, appeal to the Court and on any such appeal the Court may give such directions, including directions as to the expenses of the proceedings before the Court, as they think fit ".

The Roll of Solicitors

Additional provision as regards keeping of the roll.

10. In section 17 of the Act of 1958 (provisions as to the keeping of the roll)—

(*a*) in subsection (1)—

(i) in paragraph (*b*) the word " and " at the end thereof shall be deleted ; and there shall be inserted the following paragraph—

" (*bb*) to send any solicitor enrolled thereon, who has for at least three years been so enrolled in pursuance of regulations made by the Council under section 1 of this Act on an undertaking by him to serve a post-qualifying year of practical training which the Council are not satisfied that he has implemented, a letter enquiring whether he intends to fulfil that undertaking and intimating that unless a reply which the Council regard as satisfactory is received within the period of six months beginning with the date of the posting of the letter, his name may be removed from the roll ; and " ; and

(ii) in paragraph (*c*) after the word " reply " in the second place where that word occurs there shall be inserted the words " or in the case of a letter sent under paragraph (*bb*) of this subsection a reply which the Council of the Society do not regard as

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satisfactory" and after the words "paragraph (*b*)" there shall be inserted the words "or paragraph (*bb*)";

(*b*) in subsection (3) for the reference to section 7 there shall be substituted a reference to subsection (2) of section 3.

Practising Certificates

Addition to discretion of registrar as regards practising certificates.

11. In Schedule 5 to the Act of 1949 (provisions with respect to practising certificates etc.) in sub-paragraph (1) of paragraph 2 there shall be inserted at the end of item (*e*) the word "or" and the following items—

"(*f*) when, after a complaint has been made

(i) relating to his conduct of the business of a client his attention has been drawn by the Council to the matter, and he has not replied or has not furnished a reply in respect thereof which would enable the Council to dispose of the matter, or

(ii) of delay in the disposal of the business of a client he has not completed that business within such period as the Council may fix as being a reasonable period within which to do so,

and in either case he has been notified in writing by the Council accordingly; or

(*g*) where he has still to serve a post qualifying obligatory year of practical training in terms of an undertaking by him to that effect in his indenture of apprenticeship;".

Solicitors acting as consultants to hold practising certificates.

12. Any solicitor who not being in partnership with a solicitor or with other solicitors causes or permits his name to be associated with the name of that solicitor or with the firm name of those other solicitors, whether he is described as a consultant or adviser or in any other way, shall be deemed to be practising as a solicitor and the provisions of the Act of 1949 relating to practising certificates and to the Guarantee Fund shall apply to him accordingly:

Provided that the Council of the Society may if they think fit in any particular case exempt such a solicitor from all or any of the provisions of the said Act relating to the Guarantee Fund.

Employment by solicitor of person struck off the roll or suspended.

13.—(1) No solicitor shall, in connection with his practice as a solicitor, without the written permission of the Council of the Society which may be given for such period and subject to such conditions as the Council thinks fit, employ or remunerate any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll or that he is suspended from practising as a solicitor.

(2) A solicitor aggrieved by the refusal of the Council to grant any such permission as aforesaid or by any conditions attached by the Council to the grant thereof may appeal to the Court, and on any such appeal the Court may give such directions in the matter as they think fit.

(3) If any solicitor acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder his name shall be struck off the roll or he shall be suspended from practice for such period as the Discipline Tribunal, or in the case of an appeal the Court, may think fit.

PART II

DISCIPLINE

The Scottish Solicitors Discipline Tribunal.

14.—(1) The Discipline Committee constituted under section 24 of the Act of 1933 shall be known as " The Scottish Solicitors Discipline Tribunal " and references in any enactment or instrument shall be construed accordingly.

(2) In this section " enactments " includes any regulations or rules made under any enactment.

Discipline Tribunal to include lay members.

15. In section 24 of the Act of 1933 (constitution of Discipline Tribunal)—

(*a*) in subsection (1) after the word " Scotland " in the second place where that word occurs there shall be inserted the words " and of two members (referred to in this section as lay members) who are neither solicitors nor advocates " and at the end of the subsection there shall be added the words " or, as the case may be, by the appointment of a lay member." ;

(*b*) for subsection (4) there shall be substituted the following subsection—

" (4) The Tribunal shall be deemed to be properly constituted if—

(*a*) at least four members are present ; and

(*b*) at least one lay member is present ; and

(*c*) the number of solicitor members present exceeds the number of lay members present." ;

(*c*) there shall be added the following subsection—

" (5) There shall be paid to the lay members out of money provided by Parliament such fees and allowances as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.".

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Power of Society to deal with client account of solicitor struck off roll or suspended.

16.—(1) Where a solicitor who is practising as a solicitor under his own name or as a sole solicitor under a firm name has been struck off the roll of solicitors or has been suspended from practice, there shall, notwithstanding any enactment or any rule of law to the contrary, vest thereupon in the Society to the exclusion of any other person the right to operate on or otherwise deal with any client account in name of the solicitor or his firm.

(2) In this section the expression " client account " has the same meaning as in section 3 of the Act of 1965.

Power of Discipline Tribunal to order decision to take effect on intimation, and to impose conditions on practising certificates.

17. In the Act of 1958 after section 5 there shall be inserted the following section—

" 5A.—(1) In any case in which the Discipline Tribunal decide to order that a solicitor be struck off the roll or suspended they may order that the decision shall take effect on the date on which it is intimated to the solicitor and it shall take effect accordingly.

(2) Unless on an application to the Court under subsection (2) of section 7 of this Act the Court orders otherwise, an order made under subsection (1) of this section shall continue to have effect notwithstanding that any matter before the Court under the said section 7 has not been finally determined.

(3) In any case in which the Tribunal have exercised the power conferred by section 5 of this Act to censure or impose a fine on a solicitor or both to censure and impose a fine the Tribunal may order that his practising certificate shall be issued subject to such terms and conditions as they may direct and the registrar shall give effect to the order of the Tribunal accordingly.".

Appeal from decision of Discipline Tribunal.

18.—(1) At the end of section 7 of the Act of 1958 the following subsection shall be inserted—

" (2) Where the Discipline Tribunal have exercised the power conferred by subsection (1) of section 5A of this Act to order that their decision shall take effect on the date on which it is intimated to the solicitor concerned, that solicitor may within twenty-one days of that date apply to the Court for an order to vary or quash the order of the Discipline Tribunal in so far as it relates to the date of taking effect and on such an application the Court may make the order applied for or such other order with respect to the matter as the Court may think fit.".

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(2) In subsection (2) of section 9 of the Act of 1958 (power of Council of Society to deal with property in the hands of solicitor struck off roll or suspended) for paragraph (*b*) there shall be substituted the following paragraph—

" (*b*) the last date on which

(i) an appeal against that order may be lodged or an application may be made to the Court under subsection (2) of section 7 of this Act, or

(ii) an appeal against a decision of the Council under section 3 of this Act may be lodged ; ".

PART III

GENERAL

Name of solicitor whose name is removed from roll also to be removed from roll of notaries public.

19. The provisions of section 11 of the Act of 1958 (removal of notaries public from roll of notaries public) shall apply in the case of a solicitor who is also a notary public whose name is removed from the roll of solicitors in pursuance of the provisions of section 17 of that Act in like manner as the said provisions of section 11 apply in the case of a solicitor struck off the roll of solicitors under the provisions of that Act relating to discipline or having his name removed from the said roll at his own request under section 19 of the Act of 1933.

Agreements between solicitors as to sharing fees.

20. In section 41 of the Act of 1933 (agreements between solicitors as to sharing fees) for the words from " whom he discloses " to the end of the section there shall be substituted the words " whether or not he discloses that client shall be liable to any other solicitor employed by him for the fees and outlays of that other solicitor unless at the time of the employment he expressly disclaims such liability.".

Amendment of requirements relating to termination of suspension of solicitor.

21. In section 3 of the Act of 1958 (power of Council of Society to withdraw practising certificate on failure to comply with Accounts Rules) in subsection (1) the words " for some other competent reason " shall be omitted.

Alteration of fees payable by solicitors.

22.—(1) In section 2 of the Act of 1958 (fee payable on admission as solicitor) the words " not exceeding five pounds " shall be omitted.

(2) In Schedule 6 to the Act of 1949 (provisions with respect to the Scottish Solicitors' Guarantee Fund)—

(*a*) in sub-paragraph (1) of paragraph 1 for the words " five pounds " there shall be substituted the words " twenty five pounds ", and

(*b*) in item (*b*) of the proviso to sub-paragraph (4) of paragraph 1 for the words " ten pounds " there shall be substituted the words " twenty five pounds ".

PART III

Amendment of Schedule 1 to Act of 1958.

23. In Schedule 1 to the Act of 1958 in sub-paragraph (4) of paragraph 4—

(*a*) after the word " fined " there shall be inserted the words " or in the case of a decision under section 5A of this Act which has not been varied or quashed by the Court ",

(*b*) before the word " send " there shall be inserted the word " immediately ", and

(*c*) after the words " roll of solicitors " in the third place where those words occur there shall be inserted the words " and to any terms and conditions directed by the Tribunal under subsection (3) of section 5A of this Act ".

Definition of Discipline Tribunal.

24. In section 50 of the Act of 1933 (interpretation of terms) the definition of " Discipline Committee " shall cease to have effect and after the definition of " General Council " there shall be inserted—

" Discipline Tribunal " means the Scottish Solicitors Discipline Tribunal constituted in terms of this Act.

Interpretation.

25.—(1) In this Act except where the context otherwise requires—

1933 c. 21. " The Act of 1933 " means the Solicitors (Scotland) Act 1933.

1949 c. 63. " The Act of 1949 " means the Solicitors (Scotland) Act 1949.

1958 c. 28. " The Act of 1958 " means the Solicitors (Scotland) Act 1958.

1965 c. 29. " The Act of 1965 " means the Solicitors (Scotland) Act 1965.

(2) Save where the context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in this Act.

Citation, construction and extent.

26.—(1) This Act may be cited as the Solicitors (Scotland) Act 1976 and shall be construed as one with the Solicitors (Scotland) Acts 1933 to 1965 and those Acts and this Act may be cited together as the Solicitors (Scotland) Acts 1933 to 1976.

(2) This Act except in so far as it relates to the amendment of the House of Commons Disqualification Act 1975 extends to Scotland only.

1975 c. 24.