

This document relates to the Solicitors in the Supreme Courts of Scotland (Amendment) Bill (SP Bill 55) as introduced in the Scottish Parliament on 26 September 2019

Solicitors in The Supreme Courts of Scotland (Amendment) Bill

Explanatory Notes

Introduction

1. These Explanatory Notes have been prepared by the promoter, the Society of Solicitors in the Supreme Courts of Scotland, in order to assist the reader of the Solicitors in the Supreme Courts of Scotland (Amendment) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation, none is given.
3. The following other accompanying documents are published separately by the Parliament:
 - statements on legislative competence by the Presiding Officer and the promoter (SP Bill 55–LC);
 - a Promoter’s Memorandum (SP Bill 55–PM);
 - a Promoter’s Statement (SP Bill 55–PS).
4. The Promoter’s Statement includes information about where these documents and other documents that are relevant to the Bill (but are not accompanying documents) can be inspected or purchased.

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The Bill

5. The overall objective of the Bill is to ensure that the constitution of the Society of Solicitors in the Supreme Courts of Scotland (referred to in these notes as “the SSC Society”) and the SSC Society’s associated powers of administration reflect changed social conditions in the legal profession and in Scottish society since 1979. The President and Council of the SSC Society seek to do this by amending the relevant existing legislation (which is the Solicitors in the Supreme Courts of Scotland Act 1871 as amended in 1979).

Summary of and background to the Bill

6. The SSC Society was incorporated by a Royal Charter dated 24 January 1797 and sealed on 23 February 1797. In 1817 some of the members of the SSC Society established a scheme for the provision of annuities for widows and orphans of members. In due course the society sought to make membership of the Widows and Orphans’ Fund compulsory for all members and also to incorporate various bye-laws, regulations, minutes and resolutions made over the previous 74 years or so. It was then deemed expedient to re-incorporate the SSC Society and that was done by a private Act of Parliament. Further legislative change was thought unnecessary, or at any rate was not acted upon, until a further amending Act of 1979.

7. Conditions, socially and financially, have changed in modern Scotland. In particular, firstly, while members continue to apply to join on a frequent and regular basis the numbers have not been as high as they have been in the past. Membership of the SSC Society is voluntary (unlike membership of the Law Society of Scotland which is a requirement in law for all solicitors qualified in Scotland) and there appears to be a tendency now amongst recently qualified solicitors in Scotland not to join legal societies in the manner in which they did until recent years. Moreover, secondly, the demographic balance of the membership has altered so there is an increasing number of members in the category described as ‘retired’ rather than in practice. This raises possible doubts about the long-term viability of the SSC Society, doubts that may come to nothing. Finally, the concept of marriage and partnership has altered markedly in recent generations and it is thought desirable to reflect that in the definitions and rules of the society.

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8. The President and the Council of the SSC Society, accordingly, wish to amend the existing legislation to reflect the reality of the Scotland in which the Society exists and its members live and work. There is no known call for, or even any thought of, the Society ceasing to exist, but it has to be recognised, with the altered demographic balance among the membership, that the continued viability of the society may be uncertain. The existing legislation suggests that the founding members and those engaged in promoting that legislation did not expect the SSC Society ever to go out of business.

9. The Bill seeks to introduce into the existing legislation additional statutory powers to allow for the better administration of the SSC Society.

Commentary on sections

Section 1: Amendment of the 1871 Act

10. Subsection (2) inserts a new subsection into section 2 of the 1871 Act expressly stating that the 1871 Act applies in respect of a widower or surviving civil partner as it applies in respect of a widow and in respect of a civil partnership as it applies in respect of a marriage. The reference in the inserted subsection (2) to “necessary modifications” is to take account of such matters as that the pronouns in the existing provisions of the 1871 Act will require to be construed with those applications in mind. In consequence of the wider application of the 1871 Act it is now considered appropriate to change the name of the Widows’ Fund to “the Dependents’ Fund”. That change is provided for in subsections (4)(b), (5), (6) and (9) to (15) of section 1, as well as in section 2, of the Bill.

11. Subsection (3) amends the existing definitions of office bearers. This is to take account of changes in Scottish professional life. For example, there are now professional librarians and the statutory discipline powers for solicitors now preclude the SSC Society’s dealing with such persons.

12. Subsection (4)(a) deletes unnecessary words following on from the changed disciplinary powers of the SSC Society.

13. Subsection (4)(c) amends the 1871 Act by widening the circumstances in which a member may resign from the SSC Society.

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14. Subsection (7) introduces a new provision that allows the Council of the SSC Society a pragmatic power to settle any claim for an annuity based on cohabitation.

15. Subsection (8) is needed because there is no longer any relevant legal distinction between legitimate and illegitimate children.

16. Subsection (14) inserts a new section (section 51A) into the 1871 Act.

17. Inserted section 51A(1) allows the Society, by resolution, to close the Dependents' Fund completely.

18. Inserted section 51A(2) allows the Society, as an alternative to closure under inserted section 51A(1), to close the Dependents' Fund to members joining after such date as may be specified.

19. Subsections (3) and (4) of inserted section 51A require that if there is closure of the Dependents' Fund under inserted section 51A(1) then the financial position of present and future annuitants is protected by the making of such lump sum or other payment as seems reasonable to the Council; and thereafter any residual money in the Dependents' Fund is to be transferred to the Society.

20. Inserted section 51A(5) establishes the conditions that must be fulfilled before either closing the Dependents' Fund completely or closing the fund to new members. An actuarial investigation is required, an appropriate recommendation must be made by the Council, and there requires to be intimation to all members of the Society of a stated general meeting to consider the recommendations of the Council.

21. Inserted section 51A(6) makes further provision for closing the Dependents' Fund. The fund may be closed to new members on one date and closed completely on a later date; or it may be closed completely without first having been closed to new members.

22. Inserted section 51A(7) provides a saving for the rights of annuitants under section 41 of the 1871 Act.

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23. Inserted section 51A(8) provides that powers under section 51A are not affected by other provisions of the 1871 Act.

24. Subsection (15) inserts two new sections (sections 52A and 52B) into the 1871 Act.

25. Subsections (1) and (2) of inserted section 52A state that the Society may make provision for new and various forms of membership that are distinct from full membership and that these include but are not necessarily restricted to corporate membership, trainee solicitor membership and associate membership.

26. Inserted section 52A(3) limits the rights enjoyed by virtue of any of those newer forms of membership.

27. Inserted section 52B(1) allows the Society a power, not available at present, to wind up the Society by resolution and to make arrangements to achieve that object.

28. Inserted section 52B(2) establishes the conditions that must be fulfilled before the Society may be wound up. A special general meeting requires to be convened on 30 days' notice in writing to allow the members to discuss a proposal by the Council to wind up the Society.

29. Inserted section 52B(3) and (4) allows the Society to determine the procedure by which a decision to wind up the Society is to be taken, including the voting threshold required.

30. Inserted section 52B(5) makes provision as regards the implementation of a decision made under inserted section 52B(1).

Section 2: Expenses of this Act

31. The costs, charges, fees and expenses mentioned in this section include (but are not limited to) an introduction fee, advertising costs and professional costs incurred in preparing the Bill and its accompanying documents.

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Section 3: Repeal of 1817 Act provisions

32. This section repeals three sections of the 1871 Act that are not now considered necessary or expedient for the good governance of the Society.

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