

This document has been prepared as a “Keeling schedule” to set out the amendments to be made to the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) by the Regulation of Legal Services (Scotland) Bill.

It is provided to assist in the Parliament’s Stage 1 scrutiny of the Bill. It will not reflect any amendments agreed to by the lead committee at Stage 2 or by the Parliament at Stage 3.

Although every effort has been made to ensure the accuracy of the information, it is provided for illustrative purposes only. In addition, it should be noted that not all Schedules to the 2007 Act are included. Only schedules 1, 2 and 3 are shown. Part 4 (Legal aid) is also omitted.

Insertions proposed by the Bill are shown in red.

Deletions proposed by the Bill are shown in ~~blue and strikethrough~~.

## **PART 1 – THE SCOTTISH LEGAL ~~COMPLAINTS~~ SERVICES COMMISSION**

### *Establishment*

#### **1 The Scottish Legal ~~Services~~ ~~Complaints~~ Commission**

(1) There is established a body to be known as the Scottish Legal ~~Complaints~~ ~~Services~~ Commission (referred to in this Act as “*the Commission*”).

(2) Schedule 1 makes further provision about the status, constitution, proceedings etc. of the Commission.

~~Conduct or services complaints against practitioners~~ *Conduct, services and regulatory complaints*

#### **2 Receipt of complaints: preliminary steps**

(1) This section applies where the Commission receives a complaint by or on behalf of any of the persons mentioned in subsection (2)—

(a) suggesting—

(i) professional misconduct or unsatisfactory professional conduct by a practitioner **who is an individual** ~~other than a firm of solicitors or an incorporated practice~~;

(ii) that a conveyancing practitioner or an executry practitioner has been convicted of a criminal offence rendering the practitioner no longer a fit and proper person to provide conveyancing services as a conveyancing practitioner or, as the case may be, executry services as an executry practitioner,

(a complaint suggesting any such matter being referred to in this Part as a “*conduct complaint*”);

~~(b) suggesting that professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate (referred to in this Part as a “*services complaint*”)~~

**(b) suggesting that—**

**(i) professional services were inadequate where they were provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client, or**

**(ii) legal services were inadequate where they were provided by a person other than a practitioner to the public for fee, gain or reward,**

**(a complaint suggesting any such matter being referred to in this Part as a “*services complaint*”),**

**(c) suggesting that an authorised legal business is failing (or has failed) to comply with—**

**(i) the practice rules forming part of the rules for authorising and regulating the legal business made by the relevant professional organisation under (or for the purposes of)**

section 41(1)(a) of the 2023 Act, or

(ii) the terms on which its authorisation is granted by the relevant professional organisation including any conditions or restrictions attached to the grant,

(a complaint suggesting any such matter being referred to in this Part as a “regulatory complaint”).

(1ZA) A complaint as mentioned in subsection (1)(b)(ii) suggesting that legal services provided by a person other than a practitioner were inadequate—

(a) may include a complaint suggesting that the manner in which legal services were provided by the person was inadequate,

(b) but is not an eligible services complaint for the purposes of this Part where the Commission considers, in accordance with any provision in rules made under section 32(1), that the legal services provided by the person were merely incidental to other services (not being legal services) provided by the person.

(1ZB) Where a services complaint is made in relation to a practitioner who is an individual and the Commission considers that the complaint should also be made against the practitioner’s firm or (as the case may be) where the practitioner is an employee of another practitioner that other practitioner (referred to in this Part as the “employing practitioner”), the Commission may decide to treat the complaint as—

(a) also having been made against the practitioner’s firm or the employing practitioner (as the case may be), or

(b) having been made against the practitioner’s firm or the employing practitioner (as the case may be) instead of the practitioner.

~~(1A) The Commission must, subject to subsection (3) and sections 3 and 4 and any provision in rules made under section 32(1) as to eligibility for making complaints—~~

~~(a) determine whether the complaint constitutes—~~

~~(i) a conduct complaint,~~

~~(ii) a services complaint, and then~~

~~(b) take the preliminary steps mentioned in subsection (4).~~

(1A) The Commission must, subject to any provision in rules made under section 32(1) as to eligibility for making complaints, determine whether the complaint constitutes (to any extent)—

(a) a conduct complaint,

(b) a services complaint,

(c) a regulatory complaint, or

(d) any combination of more than one of the categories of complaint mentioned in paragraphs (a) to (c).

(1B) For the purpose of subsection (1A), the Commission may determine—

(a) where the complaint includes more than one element, that—

(i) an element constitutes a complaint falling within a category mentioned in paragraphs (a) to (c) of subsection (1A), and

(ii) another element constitutes a separate complaint falling within another of those categories,

(b) that any element of the complaint—

(i) constitutes a complaint falling within a category mentioned in paragraphs (a) to (c) of subsection (1A), and

(ii) additionally constitutes a complaint falling within another of those categories,

(for example, a single element of the complaint may constitute both a conduct complaint and a services complaint).

(2) The persons are—

(a) as respects a conduct complaint **or a regulatory complaint**, any person;

(b) as respects a services complaint—

(i) any person who appears to the Commission to have been directly affected by the suggested inadequate professional services;

(ii) the Lord Advocate;

(iii) the Advocate General for Scotland;

(iv) any judge (including a sheriff);

(v) the Auditor of the Court of Session;

(va) the auditor of the Sheriff Appeal Court;

(vi) the Auditor of any sheriff court;

(vii) the Scottish Legal Aid Board;

(viii) any relevant professional organisation

~~(2A) A determination by the Commission under subsection (1A)(a) must include a determination of whether (and if so to what extent) the complaint constitutes separate complaints falling within more than one of the categories and if so which of the categories.~~

~~(2B) Where, for the purposes of subsection (1A)(a), it appears to the Commission that the complaint may constitute both—~~

~~(a) a conduct complaint, and~~

~~(b) a separate services complaint,~~

~~it must consult, co-operate and liaise with the relevant professional organisation and have~~

~~regard to any views expressed by the organisation on the matter before making a determination under subsection (1A)(a) as respects the complaint.~~

~~(2C) A relevant professional organisation must co-operate and liaise with the Commission in relation to subsection (2B).~~

(3) The Commission is not to take **any** ~~the preliminary steps mentioned in subsection (4), and is not to take any further~~ action under any other provision of this Part, in relation to any element of a conduct complaint which is about a practitioner acting in a judicial capacity in a court or tribunal specified by order by the Scottish Ministers.

~~(4) The preliminary steps are—~~

~~(a) to determine whether or not the complaint is frivolous, vexatious or totally without merit;~~

~~(b) where the Commission determines that the complaint is any or all of these things, to—~~

~~(i) reject the complaint;~~

~~(ii) give notice in writing to the complainer and the practitioner that it has rejected the complaint as frivolous, vexatious or totally without merit (or two or all of these things).~~

(5) This section also applies to a complaint against a practitioner—

(a) that is initiated by the Commission itself (following a determination by it that a complaint should be made by it), and

(b) which, had it been received by the Commission by or on behalf of a person mentioned in subsection (2), would be a conduct complaint, a services complaint or a regulatory complaint (and subsection (1A) applies to such a complaint as it applies to a complaint mentioned in subsection (1)).

(6) Where the Commission initiates a complaint as mentioned in subsection (5), the Commission must notify in writing the following persons of the initiation of the complaint—

- (a) the practitioner to whom the complaint relates,
- (b) the relevant professional organisation,
- (c) in the case of a conduct complaint or a services complaint, where the practitioner was at the time it is suggested the conduct complained of occurred or the professional services complained of were provided (as the case may be) an employee of an employing practitioner, the employing practitioner, and
- (d) any other person considered by the Commission to have an interest in the complaint.

### **3 Existence of specified regulatory scheme**

(1) Where any element of a complaint referred to in section 2(1) is capable of being dealt with under a specified regulatory scheme, the Commission is prevented from dealing with the element but only to the extent that the element is capable of being dealt with under the specified regulatory scheme.

(2) Where the circumstances referred to in subsection (1) apply, the Commission must give notice in writing to that effect to—

- (a) the complainer and the practitioner;
- (b) such other persons as may be specified by the Scottish Ministers by order.

(3) Notice under subsection (2) must specify under which specified regulatory scheme the Commission considers the element is capable of being dealt with.

(4) Where the circumstances referred to in subsection (1) apply, notice under subsection (2) must in addition specify that the fact that the Commission is prevented by subsection (1) from dealing with the complaint to the extent that the complaint is capable of being dealt with under the specified regulatory scheme does not prevent the Commission taking the preliminary steps referred to in section 2(4) and dealing with the complaint under any provision of this Part to

the extent that it is able.

(5) In this section “*specified regulatory scheme*” means a scheme specified as such by the Scottish Ministers by order.

#### 4 Complaint not **made timeously eligible** or made prematurely

~~(1) Where a complaint referred to in section 2(1) is not made timeously, the Commission is not to take the preliminary steps referred to in section 2(4) in relation to it, and is not to take any further action under any other provision of this Part (except this section), in relation to it.~~

(1) Where the Commission considers that a complaint referred to in section 2(1) is not an eligible complaint in accordance with any provision in rules made under section 32(1), the Commission need not take any further action under this Part in relation to the complaint (except the giving of notice to the complainer, the practitioner and any other person as may be required under such rules).

~~(2) [Where a complaint referred to in section 2(1) is made prematurely, the Commission need not—~~

~~(a) make the determination referred to in section 2(1A)(a) in relation to it;~~

~~(b) take the preliminary steps referred to in section 2(4) in relation to it, and~~

~~(c) take any further action under any other provision of this Part (except this section), in relation to it.~~

(2) Where a complaint referred to in section 2(1) is made prematurely, the Commission need not take any further action under this Part in relation to the complaint (except the giving of notice to the complainer, the practitioner and any other person as may be required by rules made under section 32(1)).

~~(3) For the purposes of subsection (1) [or section 9A(3)], a complaint is not made timeously~~



~~where—~~

- ~~(a) rules made under section 32(1) fix time limits for the making of complaints;~~
- ~~(b) the complaint is made after the expiry of the time limit applicable to it;~~
- ~~(c) the Commission does not extend the time limit in accordance with the rules.~~

(4) For the purposes of subsection (2) ~~or section 9A(2)~~, a complaint is made prematurely where—

(a) the complainer has not previously communicated the substance of it to the practitioner, the practitioner's firm or, as the case may be, ~~where the practitioner is an employee of another practitioner that other practitioner (referred to in this Part as the “employing practitioner”)~~ **the employing practitioner** and given the practitioner, the firm or the employing practitioner what the Commission considers is a reasonable opportunity to deal with it;

(b) rules made under section 32(1) either—

- (i) do not provide for circumstances in which the Commission will take the steps and further action referred to in that subsection; or
- (ii) do provide for such circumstances but none is applicable in relation to the complaint.

~~(5) Where the circumstances referred to in subsection (1) or (2) apply, the Commission must give notice in writing to the complainer and practitioner to that effect.~~

~~(6) Where the circumstances referred to in subsection (2) apply, notice under subsection (5) must specify whether or not the Commission is proceeding to take the preliminary steps referred to in section 2(4).~~

## 6 Complaint determined to be conduct complaint

~~(1) This section applies where, or to the extent that, the Commission—~~

~~(a) determines under section 2(1A)(a) that a complaint is a conduct complaint, and~~

~~(b) proceeds to determine under section 2(4) whether the complaint is frivolous, vexatious or totally without merit and determines that it is none of these things.~~

(1) This section applies where the Commission determines that a complaint referred to in section 2(1) is—

(a) wholly a conduct complaint, or

(b) includes one or more elements constituting a conduct complaint.

(2) The Commission must—

(a) remit the complaint (or the part of the complaint constituting a conduct complaint) to the relevant professional organisation to deal with (and give to the organisation any material which accompanies the conduct complaint);

~~(b) give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination under section 2(1A)(a) and specifying—~~

~~(i) the reasons for the determination;~~

~~(ii) that the conduct complaint is being remitted under this section for investigation and determination by the relevant professional organisation;~~

~~(iii) the relevant professional organisation to which it is being remitted;~~

~~(iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint~~

(3) It does not matter for the purpose of subsection (1) (and the application of this section) whether the Commission's determination mentioned in that subsection follows its earlier determination that the complaint is a services complaint (to any extent) and, having investigated the complaint, the Commission subsequently determines that it is instead a

conduct complaint (to any extent).

## ~~7 Services complaint: notice~~

~~(1) This section applies where, or to the extent that, the Commission—~~

~~(a) determines under section 2(1A)(a) that a complaint is a services complaint, and~~

~~(b) proceeds to determine under section 2(4) whether the complaint is frivolous, vexatious or totally without merit and determines that it is none of these things.~~

~~(2) The Commission must give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination under section 2(1A)(a) and specifying the reasons for the determination.~~

## **7A Complaint determined to be a regulatory complaint**

(1) This section applies where the Commission determines that a complaint referred to in section 2(1) is—

(a) wholly a regulatory complaint, or

(b) includes one or more elements constituting a regulatory complaint.

(2) The Commission must remit the complaint (or the part of the complaint constituting a regulatory complaint) to the relevant professional organisation to deal with (and give to the organisation any material which accompanies the regulatory complaint).

(3) It does not matter for the purpose of subsection (1) (and the application of this section) whether the Commission's determination mentioned in that subsection follows its earlier determination that the complaint is a services complaint (to any extent) and, having investigated the complaint, the Commission subsequently determines that it is instead a regulatory complaint

(to any extent).

## 8 Services complaint: local resolution or mediation

~~(1) This section applies where the Commission—~~

~~(a) determines under section 2(1A)(a) that a complaint by or on behalf of a person referred to in section 2(2)(b)(i) is a services complaint, and~~

~~(b) proceeds to determine under section 2(4) whether the complaint is frivolous, vexatious or totally without merit and determines that it is none of these things.~~

(1) Subsection (2) applies where the Commission determines that a complaint referred to in section 2(1) that is made by or on behalf of a person referred to in section 2(2)(b)(i)—

(a) constitutes (in whole or in part) a services complaint, and

(b) either—

(i) the complaint has been made prematurely (within the meaning of section 4(4)),  
or

(ii) the practitioner, the practitioner's firm or the employing practitioner has made no attempt, or an insufficient attempt, to achieve a negotiated settlement with the complainer.

(2) ~~Where the Commission considers that either—~~

~~(a) the complaint has been made prematurely (within the meaning of section 4(4)); or~~

~~(b) the practitioner, the practitioner's firm or the employing practitioner has made no attempt, or an insufficient attempt, to achieve a negotiated settlement with the complainer,~~

the Commission may, by notice in writing to the complainer and the practitioner refer the

complaint back to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner requesting that the practitioner, the firm or the employing practitioner attempt to achieve ~~such a negotiated settlement~~ a negotiated settlement with the complainer.

(3) Where the Commission refers a complaint back to the practitioner, the practitioner's firm or the employing practitioner under subsection (2), it may, by notice in writing, require the practitioner, the firm or the employing practitioner to give, before the end of such period being not less than 21 days as the notice specifies, an account and explanation of the steps which the practitioner, firm or employing practitioner has taken to attempt to achieve a negotiated settlement.

(4) Where the Commission considers it appropriate to do so, it may, by notice in writing to the complainer and the practitioner, offer to mediate in relation to the complaint.

(5) The Commission may enter into mediation in relation to a complaint only if both the complainer and the practitioner accept the offer made under subsection (4).

(6) The Commission must discontinue mediation in relation to a complaint if either the complainer or the practitioner withdraws consent to the mediation and may do so in any other circumstances; and, if mediation is discontinued, the Commission must give notice in writing to the complainer and the practitioner of its decision.

## **9 Services complaint: Commission's duty to investigate and determine**

(1) Where—

(a) the Commission does not refer a services complaint back to the practitioner, the practitioner's firm or the employing practitioner under section 8(2) (because it considers that the practitioner, firm or employing practitioner has made a sufficient attempt to achieve a negotiated settlement);

(b) the Commission refers a services complaint back to the practitioner, the practitioner's

firm or the employing practitioner under that section but—

- (i) no attempt to achieve a negotiated settlement takes place;
- (ii) such an attempt takes place but is discontinued or a negotiated settlement is not accepted by both the practitioner and the complainer;

(c) mediation by virtue of section 8(5) in relation to the complaint—

- (i) does not take place;
- (ii) takes place but is discontinued or the outcome of the mediation is not accepted by both the complainer and the practitioner;

(d) the Commission determines ~~under section 2(1A)(a)~~ that a complaint by or on behalf of any person referred to in sub-paragraphs (ii) to (viii) of section 2(2)(b) is a services complaint **(in whole or in part)**,

the Commission must, subject to this section ~~and section 15(2) and (5)~~, investigate the complaint **(or the part of the complaint constituting a services complaint)** and after giving the complainer and the practitioner an opportunity to make representations, subject to subsections (2) to (4), determine it by reference to what the Commission considers is fair and reasonable in the circumstances.

(1A) The Commission may decide—

- (a) to discontinue the investigation of a services complaint;
- (b) to reinstate the investigation of a discontinued services complaint.

~~(1B) Where the Commission discontinues or reinstates the investigation of a services complaint it must give notice in writing to the complainer and the practitioner and specify the reasons for the decision.~~

(2) Where the complainer is a person referred to in section 2(2)(b)(i) the Commission **must**

may, subject to subsection (3), propose to the practitioner and the complainer a settlement as respects the complaint which it considers is fair and reasonable in the circumstances.

(3) Where the practitioner was, at the time the services were provided, an employee of an employing practitioner, a proposal under subsection (2) to the practitioner and the complainer must also be made to the employing practitioner.

(4) Where the practitioner and the complainer, and where subsection (3) applies the employing practitioner, accept a settlement proposed by the Commission under subsection (2) as respects the complaint, the Commission is not to determine the complaint under subsection (1)

#### **9A.— Services complaint: further provision**

~~(1) This section applies where the Commission is investigating a services complaint under section 9(1) and becomes aware of new information from which it determines that the complaint—~~

~~(a) was made prematurely,~~

~~(b) was not made timeously, or~~

~~(c) is frivolous, vexatious or totally without merit.~~

~~(2) If the complaint was made prematurely, the Commission need not take any further action in relation to it.~~

~~(3) If the complaint was not made timeously, the Commission is not to take any further action in relation to it.~~

~~(4) If the complaint is frivolous, vexatious or totally without merit, the Commission must reject it.~~

~~(5) Where the Commission—~~

~~(a) does not take any further action in relation to, or~~

~~(b) rejects,~~

~~a complaint under this section it must give notice in writing to the complainer and the practitioner and specify the reasons for the decision.~~

## **10 Commission upholds services complaint**

(1) Where the Commission makes a determination under section 9(1) upholding a services complaint, it may take such of the steps mentioned in subsection (2) as it considers fair and reasonable in the circumstances.

(2) The steps are, subject to subsection (3)—

(a) to determine that the amount of the fees and outlays to which the practitioner is entitled for the services provided to the client and to which the complaint relates, is to be—

(i) nil; or

(ii) such amount as the Commission may specify in the determination,

and to direct the practitioner to comply or secure compliance with such of the requirements set out in subsection (5) as appear to the Commission to be necessary to give effect to the determination;

(b) to direct the practitioner to secure the rectification at the practitioner's own expense of any such error, omission or other deficiency arising in connection with the services as the Commission may specify;

(c) to direct the practitioner to take, at the practitioner's own expense, such other action in the interests of the complainer as the Commission may specify;



(d) where the Commission considers that the complainer has been directly affected by the inadequate professional services, to direct the practitioner to pay compensation of such amount, not exceeding £20,000, as the Commission may specify to the complainer for loss, inconvenience or distress resulting from the inadequate professional services;

(e) where the Commission considers that the practitioner may not have sufficient competence in relation to any aspect of the law or legal practice, to report the matter to the relevant professional organisation.

(3) Where the practitioner was, at the time when the services were provided, an employee (referred to in this section as an “*employee practitioner*”) of an employing practitioner—

(a) a direction under subsection (2)(a), (b) or (c) must be to the employing practitioner instead of the employee practitioner;

(b) a direction under subsection (2)(d)—

(i) may be to and direct either the employing practitioner or, if the Commission considers it appropriate, the employee practitioner to pay all of the compensation directed to be paid under that subsection in relation to the complaint concerned;

(ii) may be to and direct the employee practitioner to pay such part of the total amount of compensation directed to be paid under that subsection in relation to the complaint concerned as the Commission considers appropriate and if it does so, must be to and direct the employing practitioner to pay the remainder of the total amount;

(c) a copy of any report under subsection (2)(e) must be sent to the employing practitioner.

(3A) In the case where a direction under subsection (2)(c) is made to the employing practitioner, the direction may relate to systems operated by the employing practitioner that affect the provision of professional services generally by the employing practitioner where that is relevant to the complaint.

(4) The Commission must, in considering what steps to take under subsection (2), take into

account any—

(a) prior direction by it under subsection (2)(d) that the employee practitioner concerned or, where subsection (3) applies, the employing practitioner, pay to the complainer an amount by way of compensation;

(b) award of damages by the court to the complainer;

~~(c) other compensation ordered (whether by determination, direction or otherwise) by a tribunal or other professional body to be paid to the complainer,~~

(d) decision taken by a relevant professional organisation in respect of a conduct complaint, or a regulatory complaint, against the practitioner where the conduct complaint, or the regulatory complaint, arises from the same matter to which the services complaint relates,

in relation to the subject matter of the complaint.

(5) The requirements referred to in subsection (2)(a) are to—

(a) refund, whether wholly or to any specified extent any amount already paid by or on behalf of the client in respect of fees and outlays of the practitioner in connection with the services;

(b) waive, whether wholly or to any specified extent, the right to recover the fees and outlays.

(6) Before making a determination in accordance with subsection (2)(a), the Commission may submit the practitioner's accounts for the fees and outlays to the Auditor of the Court of Session for taxation.

(7) The Scottish Ministers may by order, after consulting—

(a) the relevant professional organisations;

(b) such groups of persons representing consumer interests as they consider appropriate, amend subsection (2)(d) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

## **11 Fair and reasonable: matters to be taken into account by Commission**

In considering what is fair and reasonable in the circumstances, the Commission is to take into account the relevant law (including levels of damages awarded by courts in similar circumstances) and relevant codes of practice, professional rules, standards and guidance.

## **12 ~~Services complaint: notice where not upheld or upheld~~**

~~(1) The Commission must give notice in writing of a—~~

~~(a) determination by it under section 9(1) not to uphold a services complaint;~~

~~(b) determination by it under that section upholding any such complaint;~~

~~(c) determination, direction or report by it under section 10(2),~~

~~to the complainer and every practitioner specified in it and, where section 10(3) applies, to the employing practitioner by sending to each of them a copy of the determination, the direction or, as the case may be, the report.~~

~~(2) Where the determination is made by a determination committee by virtue of paragraph 13(2)(d)(i) or, as the case may be, (ii) of schedule 1, notice under subsection (1) must specify the reasons for the determination.~~

## **12A Services complaint upheld: failure to refund fees and outlays**

(1) This section applies where—

(a) under section 10(2)(a), the Commission directs the practitioner or the employing practitioner (as the case may be) to refund an amount in respect of fees or outlays of the

practitioner already paid by or on behalf of the client to whom the professional services were provided by the practitioner (such amount being referred to in this section as “the fee refund”),

(b) any proportion of the fee refund has not been paid by the expiry of the period of 90 days commencing on the day on which notice of the direction was given to the practitioner or the employing practitioner in accordance with rules made under section 32(1), and

(c) the failure to pay any proportion of the fee refund within that period is—

(i) where the direction was given to the practitioner, as a result of the death, insolvency or involuntary cessation of trade of the practitioner,

(ii) where the direction was given to the employing practitioner, as a result of the insolvency or involuntary cessation of trade of the employing practitioner.

(2) The proportion of the fee refund that has not been paid is to be treated for the purposes of the practitioner’s or the employing practitioner’s (as the case may be) professional indemnity insurance as if it were an amount of compensation that the Commission had directed under section 10(2)(d) the practitioner or employing practitioner to pay to the complainer.

(3) But subsection (2) applies only to the extent that the amount of the fee refund that has not been repaid, taken together with any amount of compensation that the Commission directed the practitioner or the employing practitioner to pay to the complainer under section 10(2)(d), does not exceed £35,000.

(4) The Scottish Ministers may by regulations amend subsection (3) to substitute a different amount for the one for the time being specified there.

(5) Before making regulations under subsection (4), the Scottish Ministers must consult—

(a) the relevant professional organisations, and

(b) such groups of persons representing consumer interests as they consider

appropriate.

### 13 Services complaint: reports

(1) The Commission may, if it considers it appropriate to do so in any particular case, publish a report of—

(a) any mediation which has taken place by virtue of section 8(5) in relation to a services complaint, the outcome of which is accepted by both the complainer and the practitioner;

(b) an investigation of a services complaint under section 9 and—

(i) any settlement proposed under subsection (2) of that section as respects the complaint, which is accepted as mentioned in subsection (4) of that section;

(ii) any determination of the complaint under subsection (1) of that section;

(c) a determination, direction or report under section 10(2).

(1A) Where the Commission identifies that a number of services complaints against a particular practitioner have resulted in an outcome mentioned in any of paragraphs (a) to (c) of subsection (1) (or any combination of the same), the Commission may, if it considers it appropriate to do so, publish a report relating to the complaints and the outcomes.

(1B) Subsections (1) and (1A) are subject to subsection (5).

(2) A report under subsection (1) must not (unless the complainer consents)—

(a) mention the name of the complainer;

(b) include any particulars which, in the opinion of the Commission, are likely to identify the complainer.

(2A) A report under subsection (1A) must not—

(a) mention the name of a complainer without the complainer's consent,

(b) include any particulars which, in the opinion of the Commission, are likely to identify any complainer without the complainer's consent.

(3) A report under subsection (1) or (1A) may only—

(a) mention the name of the practitioner complained of; or

(b) include any particulars which, in the opinion of the Commission, are likely to identify the practitioner,

if the practitioner consents or the condition in subsection (4) is met.

(4) The condition is that—

~~(a) the case is exceptional;~~

(a) either—

(i) in relation to a report under subsection (1), the case is exceptional,

(ii) in relation to a report under subsection (1A), the circumstances or number of complaints is exceptional,

(b) in the opinion of the Commission, it is in the public interest for the identity of the practitioner concerned to be included in the report; and

(c) the Commission has given not less than 4 weeks notice in writing to the practitioner that it intends to identify the practitioner in the report, specifying the reasons for its decision.

(5) Subsections (1) and (1A) do not apply in relation to—

(a) a determination of a complaint under section 9(1) that is not upheld following an application for review under section 20A(1),

(b) a determination, direction or report under section 10(2) that is not upheld following an

application for review under section 20A(1).

(6) Where the review committee upholds a services complaint or confirms a determination under section 9(1) to uphold a services complaint, the reference in subsection (1)(b)(ii) to a determination of the complaint under section 9(1) is to be treated as a decision of the review committee under section 20A(6).

(7) Where the review committee decides under section 20A(6) to direct that a step mentioned in section 10(2) be taken, subsection (1)(c) is to be read as if the reference to “under section 10(2)” were a reference to “as is mentioned in section 10(2) that is directed to be taken by the review committee in its decision under section 20A(6)”.

#### **14 Determination under section 9(1) or taking of steps under section 10(2): effect in relation to proceedings**

(1) Neither the making of a determination under section 9(1) upholding a complaint, nor the taking of any steps under section 10(2) may be founded upon in any proceedings.

(2) A direction under section 10(2)(d) to a practitioner to pay compensation to a complainer does not prejudice any right of the complainer to take proceedings against the practitioner for damages in respect of any loss which the complainer claims to have suffered; and any amount directed to be paid to the complainer under that section may be taken into account in the computation of any award of damages made to the complainer in any such proceedings.

#### ~~15 Complaint appears during mediation or investigation to fall within different category~~

~~(1) Where a relevant professional organisation at any time during any mediation by it, or its investigation, of a conduct complaint remitted to it under [section 6(2)(a)]<sup>1</sup> considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a services complaint, it must —~~

~~(a) suspend the mediation or, as the case may be, the investigation;~~

~~(b) consult, co-operate and liaise with the Commission as respects the matter;~~

~~(c) send the complaint and any material which relates to it and which is in the organisation's possession to the Commission;~~

~~(d) give notice in writing to the complainer and the practitioner that it so considers and is so doing.~~

~~(2) Where the Commission at any time during its mediation by virtue of section 8(5) in relation to, or investigation by virtue of section 9(1) of, a services complaint considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint, it must—~~

~~(a) suspend the mediation or investigation;~~

~~(b) send a copy of the complaint and any material which relates to it and which is in the Commission's possession to the relevant professional organisation;~~

~~(c) consult, co-operate and liaise with the relevant professional organisation as respects the matter;~~

~~(d) give notice in writing to the complainer, the practitioner and the relevant professional organisation that it so considers and is so doing.~~

~~(3) Where, in the circumstances referred to in subsection (1) or (2) the Commission, having regard to the views expressed by the relevant professional organisation as respects the matter, considers that—~~

~~(a) its determination under [section 2(1A)(a)] as respects the complaint should be confirmed (to any extent), it must so determine; and the determination under this paragraph must specify the extent to which the determination under that section is confirmed;~~

~~(b) a complaint (or any element of a complaint) which was determined by it under [section~~



~~2(1A)(a)]<sup>2</sup> to constitute—~~

~~(i) a conduct complaint constitutes instead a services complaint;~~

~~(ii) a services complaint constitutes instead a conduct complaint,~~

~~it must determine accordingly.~~

~~(4) Where, or to the extent that, the Commission determines under subsection (3)(a) to confirm to any extent its determination under [section 2(1A)(a)]—~~

~~(a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;~~

~~(b) any suspension under subsection (1)(a) or (2)(a) ceases.~~

~~(5) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under [section 2(1A)(a)] to constitute a services complaint constitutes instead a conduct complaint, it must—~~

~~(a) remit the conduct complaint to the relevant professional organisation to deal with (and give to the organisation any material referred to in [section 6(2)(a)]);~~

~~(b) give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying—~~

~~(i) the reasons for the determination;~~

~~(ii) that the conduct complaint is being remitted under paragraph (a);~~

~~(iii) the relevant professional organisation to which it is being remitted;~~

~~(iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.~~

~~(6) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under [section 2(1A)(a)] to constitute a conduct complaint constitutes instead a services complaint—~~

~~(a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;~~

~~(b) sections 8 to 12 apply to the services complaint as they apply where a determination is made under [section 2(1A)(a)] that a complaint constitutes a services complaint.~~

## **16 Power to monitor compliance with directions under section 10(2)**

(1) The Commission must, by notice in writing, require every practitioner specified in any direction under section 10(2) to give, before the end of such period being not less than 21 days as the notice specifies, an account and explanation of the steps which the practitioner has taken to comply with the direction.

(2) Where ~~an appeal~~ a review against any such direction is made under ~~section 20A~~ section 21(1), any notice under subsection (1) relating to the direction ceases to have effect pending the outcome of ~~the review~~ the appeal.

## **17 Power to examine documents and demand explanations in connection with ~~conduct or services~~ complaints**

(1) Where the Commission is satisfied that it is necessary for it to do so for the purposes of section 2, 4, 8, 9, 10, ~~15~~ or 16 ~~or any provision in rules made under section 32(1) (but only in so far as the provision in the rules relates to the categorisation of complaints)~~, it may give notice in writing in accordance with subsection (2) to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner.

(2) Notice under subsection (1) may require—

(a) the production or delivery to any person appointed by the Commission, at a time and place specified in the notice, of all documents mentioned in subsection (3) which are in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner and which relate to the matters to which the complaint relates (whether or not they relate also to other matters);

(b) an explanation, within such period being not less than 21 days as the notice specifies, from the practitioner, the firm or, as the case may be, the employing practitioner regarding the matters to which the complaint relates.

(3) The documents are—

(a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner;

(b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the practitioner is the sole trustee or a co-trustee only with one or more of the practitioner's partners or employees or, as the case may be, where the practitioner is an incorporated practice of which the practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees.

(3A) Nothing in a notice under subsection (1) requires a practitioner, a practitioner's firm or an employing practitioner to provide a document or information that is subject to legal privilege.

(3B) But subsection (3A) does not prevent the disclosure of a document or information that is the subject of another right of confidentiality (regardless of whether or not the client of the practitioner, practitioner's firm or employing practitioner consents to the disclosure).

(3C) For the purpose of subsection (3A), a document or information is subject to legal privilege if it constitutes a communication—

(a) between the practitioner, the practitioner's firm or the employing practitioner and the

client of the practitioner, practitioner's firm or employing practitioner, or

(b) made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

(4) Where the Commission is satisfied that it is necessary for it to do so for the purposes of section 2, 4, 8, 9, or 10 or any provision in rules made under section 32(1) ~~10 or 15~~, it may give notice in writing in accordance with subsection (5) to the complainer.

(5) Notice under subsection (4) may require—

(a) the production or delivery to any person appointed by the Commission at a time and place specified in the notice, of all documents mentioned in subsection (6) which are in the possession or control of the complainer and which relate to the matters to which the complaint relates (whether or not they relate to other matters);

(b) an explanation, within such period being not less than 21 days as the notice specifies, from the complainer regarding the matters to which the complaint relates.

(6) The documents are all books, accounts, deeds, securities, papers and other documents in the possession or control of the complainer.

(7) Schedule 2 makes further provision about the powers of the Commission under this section.

### **17A Power of Commission to request practitioner's details in connection with complaints**

(1) Where the Commission is satisfied that it is necessary to do so in relation to a complaint referred to in section 2(1) made against a practitioner for a purpose mentioned in subsection (3), the Commission may request that the relevant professional organisation provide any

contact details for the practitioner that are held by the relevant professional organisation.

(2) The relevant professional organisation must provide any details that are requested under subsection (1) that are held by the relevant professional organisation to the Commission as soon as practicable.

(3) The purpose referred to in subsection (1) is for the purpose of—

(a) section 2, 4, 8, 9, 10 or 16, or

(b) any provision in rules made under section 32(1) but only in so far as the provision in the rules relates to the categorisation of complaints.

## **18 Power of Commission to recover certain expenses**

(1) The Commission is, subject to subsection (2), entitled to recover from a practitioner, the practitioner's firm or, as the case may be, the employing practitioner, in respect of whom it has taken any action by virtue of section 17, any expenditure reasonably incurred by it in so doing.

(2) Expenditure incurred in taking action by virtue of section 17 is recoverable under subsection (1) only where notice has been served under paragraph 2(a) of schedule 2 in connection with that action and either—

(a) no application has been made in consequence under paragraph 3 of that schedule; or

(b) the court, on such an application, has made a direction under paragraph 4 of that schedule.

## **19 Documents and information from third parties**

(1) Where the Commission has requested that documents or information in the possession or control of a person be produced for the purposes of an investigation by it under this Act and

the person refuses or fails to produce the documents or information, the Commission may apply to the court for an order under subsection (2).

(2) An order by the court under this subsection may require a person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the Commission within such time as the court may order.

(3) The court may make an order under subsection (2) only if—

(a) it appears—

(i) the documents sought are; or

(ii) the information sought is,

relevant to the investigation; and

(b) it is in the public interest for the documents or information to be produced.

(4) Where the Commission receives possession of any such documents or information which have been produced or delivered to it, it must without delay serve on the person from whom the documents or information were received, a notice giving particulars and the date on which it took possession.

(5) Before the expiry of the period of 14 days after service of a notice under subsection (4) the person on whom the notice has been served may apply to the court for an order directing return of the documents or information to the person from whom they were received by the Commission or to such other person as the applicant may request; and on the hearing of any such application the court may make the order applied for or such other order as it thinks fit.

(6) If no application is made to the court under subsection (5), or if the court on any such application directs that the documents or information in question remain in the custody or control of the Commission, the Commission may make enquiries to ascertain the person to whom they belong and may deal with the documents or information in accordance with the directions of that person.

- (7) This section does not apply to documents or information in the possession or control of—
- (a) the person who made the complaint from which the investigation arises;
  - (b) the practitioner concerned;
  - (c) a relevant professional organisation.

Directions; Enforcement; Scotland; Scottish Legal Complaints Commission

## **20 Enforcement of Commission direction under section 10(2)**

A direction by the Commission under section 10(2) is enforceable in like manner as an extract registered decree arbitral in its favour bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

### *Reviews*

#### **20A Applications to review committee**

(1) A person mentioned in subsection (2) may make an application for a review of a decision by the Commission in relation to a complaint that is mentioned in subsection (3).

(2) The persons are—

- (a) the complainer,
- (b) the practitioner to whom the complaint relates,
- (c) the practitioner's firm,
- (d) the employing practitioner,
- (e) the relevant professional organisation.

(3) The decisions are—

- (a) a decision by the Commission that a complaint referred to in section 2(1) is or is not an eligible complaint in accordance with any provision in rules made under section 32(1),
- (b) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a conduct complaint) to the relevant professional organisation under section 6(2),
- (c) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a regulatory complaint) to the relevant professional organisation under section 7A(2),
- (d) a decision to discontinue the investigation of a services complaint in accordance with section 9(1A)(a),
- (e) a decision to reinstate the investigation of a services complaint in accordance with section 9(1A)(b),
- (f) a determination under section 9(1) to uphold a services complaint,
- (g) a determination under section 9(1) to not uphold a services complaint,
- (h) a decision to take any of the steps mentioned in section 10(1) other than—
  - (i) a direction to the practitioner to pay compensation to the complainer, or
  - (ii) a decision as to the amount of such compensation to be paid under the direction.

(4) Subject to subsection (5), an application for review must—

- (a) in the case of a review of a decision mentioned in subsection (3)(a), (b), (c) or (e), be made before the expiry of the period of 14 days beginning with the day on which notice



of the decision was given to the complainer and the practitioner,

(b) in the case of a review of another decision mentioned in subsection (3), be made before the expiry of the period of 28 days beginning with the day on which notice of the decision was given to the complainer and the practitioner.

(5) The review committee may decide that it may consider an application for a review of a decision under subsection (1) that is made after the expiry of the period referred to in subsection (4) if it considers that to be appropriate.

(6) Following a review, the review committee may make such decision as it considers appropriate (including a decision that substitutes its own decision for the decision to which the application for review relates).

(7) Where a decision of the review committee upholds a services complaint or confirms a determination under section 9(1) to uphold a services complaint, the review committee may direct that such of the steps mentioned in section 10(2) as it considers fair and reasonable in the circumstances be taken.

(8) A decision of the review committee under this section is final.

### *Appeals*

#### **~~21 Appeal against Commission decisions~~**

~~(1) Any person mentioned in subsection (2) may, with the leave of the court, appeal against any decision of the Commission under the preceding sections of this Part as respects a complaint on any ground set out in subsection (4).~~

~~(2) Those persons are—~~

~~(a) the complainer;~~

~~(b) the practitioner to whom the complaint relates;~~

~~(c) the practitioner's firm;~~

~~(d) the employing practitioner;~~

~~(e) the relevant professional organisation.~~

~~(3) An appeal under subsection (1) must be made before the expiry of the period of 28 days beginning with the day on which notice of the decision was given to the complainer and the practitioner; but the court may, on cause shown, consider an appeal made after the expiry of that period.~~

~~(4) The grounds referred to in subsection (1) are—~~

~~(a) that the Commission's decision was based on an error of law;~~

~~(b) that there has been a procedural impropriety in the conduct of any hearing by the Commission on the complaint;~~

~~(c) that the Commission has acted irrationally in the exercise of its discretion;~~

~~(d) that the Commission's decision was not supported by the facts found to be established by the Commission.~~

~~(5) The Commission is to be a party in any proceedings on an appeal under subsection (1).~~

~~(6) In this section and in section 22, "decision" includes any determination, direction or other decision and also includes the making of any report under section 10(2)(e).~~

## **~~22 Appeal: supplementary provision~~**

~~(1) On any appeal under section 21(1), the court may make such order as it thinks fit (including an order substituting its own decision for the decision appealed against).~~

~~(2) Where such an order upholds a services complaint or confirms a decision of the~~

~~Commission to uphold a services complaint, the court may direct that such of the steps mentioned in 10(2) as it considers fair and reasonable in the circumstances be taken.~~

~~(3) On any appeal under section 21(1) the court may make such ancillary order (including an order as to the expenses of the appeal) as it thinks fit.~~

~~(4) A decision of the court under this section is final.~~

*Services complaints: special provision for complaints against unregulated persons*

## **22A Services complaints: special provision for complaints against unregulated persons**

(1) Subject to subsection (2), the following provisions apply in relation to a services complaint against a person who was not a practitioner at the time when the legal services complained of were provided but who was providing legal services to the public for fee, gain or reward (an “unregulated provider”) as the provisions apply in relation to a services complaint against a practitioner—

- (a) section 2,
- (b) section 3,
- (c) section 4,
- (d) section 8,
- (e) section 9,
- (f) section 10,
- (g) section 11,
- (h) section 12A,
- (i) section 13,

- (j) section 14,
- (k) section 16,
- (l) section 17,
- (m) section 18,
- (n) section 19,
- (o) section 20,
- (p) section 20A,
- (q) section 35,
- (r) section 40, and
- (s) schedule 2.

(2) The provisions referred to in subsection (1) apply in relation to an unregulated provider against whom a services complaint is made subject to the following modifications—

(a) references to “inadequate professional services” are to be read as if they were references to “inadequate legal services” (meaning, in relation to an unregulated provider, legal services that are in any respect not of the quality which could reasonably be expected of a competent unregulated provider),

(b) references to the practitioner against whom a complaint is made are to be read as including references to the unregulated provider against whom a complaint is made,

(c) references to a “practitioner’s firm” are to be read as if they were omitted,

(d) references to an “employing practitioner”, in relation to a practitioner, are to be read as if they were references to the employer (if any) of the unregulated provider against whom the complaint is made,

(e) references to a “relevant professional organisation” are to be read as if they were omitted,

(f) where the unregulated provider against whom a complaint is made is in the employment of another person, references in section 10 to “employee practitioner” are to be read as if they were references to the unregulated provider,

(g) section 10(2) is to be read as if paragraph (e) were omitted.

*Handling by relevant professional organisations of conduct complaints*

**23 Handling by relevant professional organisations of conduct complaints: investigation by Commission**

(1) The Commission may, subject to subsection (4), carry out such investigation as appears to it to be appropriate of a handling complaint.

~~(1A) In this Act, a “handling complaint” means a complaint which—~~

~~(a) relates to the manner in which a conduct complaint has been dealt with by a relevant professional organisation to which it has been remitted under section 6(2)(a) or 15(5)(a), and—~~

~~(b) is made—~~

~~(i) by or on behalf of the person by whom or on whose behalf the conduct complaint was made,~~

~~(ii) by the practitioner concerned in the conduct complaint.~~

(1A) In this Act, a “handling complaint” means—

(a) a complaint which—

(i) relates to the manner in which a conduct complaint has been dealt with by a relevant professional organisation to which it has been remitted under section 6(2) (or is treated under section 33A(2) as if it were remitted under section 6(2)), and

(ii) is made—

(A) by or on behalf of the person by whom or on whose behalf the conduct complaint was made, or

(B) by the practitioner concerned in the conduct complaint, or

(b) a complaint which—

(i) relates to the manner in which a regulatory complaint has been dealt with by the relevant professional organisation to which it has been remitted under section 7A(2) (or is treated under section 33B(2) as if it were remitted under section 7A(2)), and

(ii) is made—

(A) by or on behalf of the person by whom or on whose behalf the regulatory complaint was made, or

(B) by the authorised legal business concerned in the regulatory complaint.

(2) The Commission may decide—

(a) not to investigate a handling complaint;

(b) to discontinue the investigation of a handling complaint;

(c) to reinstate the investigation of a discontinued handling complaint.

~~(3) If the Commission decides not to investigate, or to discontinue or reinstate the investigation of, a handling complaint it must give notice in writing to—~~

~~(a) the person who made the handling complaint (and, if made on behalf of another person, that other person);~~

~~(aa) the other party to the conduct complaint to which the handling complaint relates;~~

~~(b) the relevant professional organisation,~~

~~by sending to each of them a copy of the decision and specifying the reasons for the decision.~~

(4) The Commission must not investigate a handling complaint where either—

(a) the relevant professional organisation has not completed its investigation of the conduct complaint **or regulatory complaint** to which the handling complaint relates; or

(b) the handling complaint is made after the expiry of the period of 6 months after such date as the Scottish Ministers may specify by order,

but paragraph (a) does not apply in any of the circumstances mentioned in subsection (5).

(5) The circumstances are that—

(a) ~~the handling complaint is that~~ the relevant professional organisation—

(i) has acted unreasonably in failing to start an investigation into the complaint; or

(ii) having started such an investigation, has failed to complete it within a reasonable time;

or

(b) the Commission considers that, even though the complaint is being investigated by the organisation, an investigation by the Commission is justified.

~~(6) Where the Commission decides that subsection (4)(a) does not prevent it investigating a handling complaint because any of the circumstances referred to in subsection (5) apply, it must give notice in writing to—~~

~~(a) the person who made the handling complaint (and, if made on behalf of another person,~~

~~that other person);~~

~~(aa) the other party to the conduct complaint to which the handling complaint relates;~~

~~(b) the relevant professional organisation,~~

~~by sending to each of them a copy of the decision and specifying the reasons for the decision.~~

(7) An order under subsection (4)(b) may specify different dates for different purposes.

(8) Where the Commission is conducting an investigation under this section, it may at any time make a written interim report in relation to the investigation and must send a copy of any such report to—

(a) the person who made the handling complaint (and, if made on behalf of another person, that other person);

(aa) the other party to the conduct complaint **or regulatory complaint** to which the handling complaint relates;

(b) the relevant professional organisation.

(9) The Scottish Ministers may by order amend the period of time referred to in subsection (4)(b).

~~(10) In this section and section 24, “the other party to the conduct complaint to which the handling complaint relates” is—~~

~~(a) in the case of a handling complaint made in accordance with subsection (1A)(b)(i), the practitioner concerned in the conduct complaint to which the handling complaint relates,~~

~~(b) in the case of a handling complaint made in accordance with subsection (1A)(b)(ii), the complainer in the conduct complaint to which the handling complaint relates.~~



## 24 Investigation under section 23: final report and recommendations directions

- (1) Where the Commission has completed an investigation under section 23 it must—
- (a) make a written report of its conclusions;
  - (b) send a copy of the report to—
    - (i) the person who made the handling complaint (and, if made on behalf of another person, that other person);
    - (ia) the other party to the conduct complaint or regulatory complaint to which the handling complaint relates;
    - (ii) the relevant professional organisation.
- (2) A report under this section may include one or more of the following directions to the relevant professional organisation recommendations—
- (a) that the relevant professional organisation provide to the person making the handling complaint (and, if made on behalf of another person, that other person) such information about the conduct complaint or regulatory complaint to which the handling complaint relates, and how it was dealt with, as the Commission considers appropriate;
  - (b) that the conduct complaint or regulatory complaint be investigated further by the relevant professional organisation;
  - (c) that the conduct complaint or regulatory complaint be reconsidered by the relevant professional organisation;
  - (d) that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned;
  - (e) that the relevant professional organisation pay compensation of such amount, not exceeding £5000, as the Commission may specify to the person making the handling

complaint (or the person on whose behalf it was made) for loss, inconvenience or distress resulting from the way in which the conduct complaint was handled by the organisation;

(f) that the relevant professional organisation pay to the person making the handling complaint (or the person on whose behalf it was made) an amount specified by the Commission by way of reimbursement of the cost, or part of the cost, of making the handling complaint.

(3) Where a report under this section includes any **direction recommendation**, the report must state the reasons for **giving the direction making the recommendation**.

(4) A relevant professional organisation to whom a report is sent by the Commission under this section must ~~have regard to the conclusions and recommendations set out in the report so far as relating to the organisation.~~ —

(a) **have regard to the conclusions set out in the report so far as they relate to the organisation, and**

(b) **comply with any direction given in the report—**

(i) **within such time period as may be specified in the report, or**

(ii) **within such extended period of time for compliance as may be agreed between the Commission and the relevant professional organisation.**

~~(5) Where a report sent to a relevant professional organisation under this section includes a recommendation relating to it, the organisation must, before the end of the period of 14 days beginning with the date on which the report was sent, notify the Commission, the person who made the handling complaint (and, if made on behalf of another person, that other person) and the other party to the conduct complaint to which the handling complaint relates, in writing, of—...~~

~~(b) its decision not to comply wholly with a recommendation and any reason for that decision.~~

~~(6) Where the Commission is either—~~

~~(a) notified under subsection (5) that the relevant professional organisation has decided not to comply wholly with a recommendation; or~~

~~(b) of the opinion that the relevant professional organisation has not complied wholly with a recommendation before the end of the period of 3 months (or such longer period as the Commission may determine under subsection (6A)) beginning with the date on which the report was sent to the organisation under this section,—~~

~~the Commission may direct the professional organisation to comply with that recommendation if the Commission thinks fit; and the organisation must comply with the direction.~~

~~(6A) If the relevant professional organisation considers that it is not practicable to comply wholly with a recommendation within 3 months, the Commission may determine a longer period within which the relevant professional organisation must so comply.~~

~~(6B) If the Commission determines a longer period under subsection (6A), the relevant professional organisation must notify—~~

~~(a) the person who made the handling complaint (and, if made on behalf of another person, that other person);~~

~~(b) the other party to the conduct complaint to which the handling complaint relates.~~

~~(7) For the purposes of subsection (6), a “*recommendation*” means any recommendation referred to in paragraphs (a) to (c), (e) or (f) of subsection (2).~~

(8) The Scottish Ministers may by order, after consulting—

(a) the relevant professional organisations;

(b) such groups of persons representing consumer interests as they consider appropriate,

amend subsection (2)(e) by substituting for the amount for the time being specified in that

subsection such other amount as they consider appropriate.

## 25 Failure to comply with **direction recommendation**

(1) If the Commission considers that a relevant professional organisation has failed to comply with a direction **in a report under section 24 within the time period specified in the report or any extended period of time agreed between the Commission and the organisation** ~~under section 24(6)~~, the Commission may apply by petition to the court for the organisation to be dealt with in accordance with subsection (2).

(2) Where such a petition is presented, the court may inquire into the matter and after hearing—

(a) any witnesses who may be produced against or on behalf of the professional organisation; and

(b) any statement that may be offered in defence,

may order the organisation to comply with the **direction recommendation** ~~with which the direction under section 24(6) is concerned~~.

## 26 Abolition of Scottish legal services ombudsman

(1) The office of the Scottish legal services ombudsman (“the ombudsman”) is abolished on such date as the Scottish Ministers may by order specify.

(2) The Scottish Ministers may not make an order under subsection (1) unless the ombudsman has no exercisable functions.

(3) The functions of the ombudsman cease to be exercisable except in relation to the advice, services and activities mentioned in section 77(2).

## *Finance*

### **27 Annual general levy**

(1) Each—

(a) advocate practising as such;

(b) conveyancing practitioner or executry practitioner;

~~(c) person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act;~~

(c) person who has acquired a right to provide legal services by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act),

(d) solicitor who has in force a practising certificate,

(e) authorised legal business,

must, subject to subsection (2) and section 29(2), pay to the Commission in respect of each financial year a contribution (referred to in this Part as “*the annual general levy*”).

(2) Each relevant professional organisation—

(a) must secure the collection by it, from all of the persons falling within the categories referred to in ~~paragraphs (a) to (d)~~ paragraphs (a) to (e) of subsection (1) as respects whom it is the relevant professional organisation, of the annual general levy due by them;

(b) must pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.

(3) Any—

(a) sum due to the Commission under subsection (2)(b);

(b) interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid, may be recovered by it (as a debt) from the relevant professional organisation which is liable under that subsection to pay the sum.

(4) A relevant professional organisation may recover (as a debt), from any person falling within the categories referred to in ~~paragraphs (a) to (d)~~ paragraphs (a) to (e) of subsection (1) as respects whom it is the relevant professional organisation—

(a) any sum due by the person to the Commission under that subsection;

(b) any interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid.

~~(5) If any person who is liable under subsection (1) to pay the annual general levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct.~~

(5) If any person who is liable under subsection (1) to pay the annual general levy (“the liable person”) fails to pay any amount of the levy, or pays any such amount late—

(a) where the liable person is an individual, the failure to pay or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the liable person,

(b) where the liable person is not an individual and where the failure to pay or late payment involves the connivance or consent of (or is attributed to the neglect of) a responsible official of a liable person, the failure to pay or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the responsible official.

(6) In subsection (5), a “responsible official” of a liable person is—

(a) where the liable person is a company, a director, secretary, manager or other similar

officer,

(b) where the liable person is a limited liability partnership, a member,

(c) where the liable person is an ordinary partnership, a partner,

(d) where the liable person is another body or association, a person who is concerned in the management or control of its affairs,

but in each case also extends to a person purporting to act in such a capacity.

## 28 Complaints levy

(1) A practitioner against whom a services complaint is made must pay to the Commission, in the circumstances specified in rules made under section 32(1) mentioned in subsection (2), a contribution in relation to the complaint (referred to in this Part as “*the complaints levy*”).

~~(2) The circumstances are where—~~

~~(a) any of the following applies—~~

~~(i) mediation by virtue of section 8(5) takes place in relation to the complaint and the outcome of the mediation is accepted by both the complainer and the practitioner;~~

~~(ii) a settlement proposed as respects the complaint by the Commission under section 9(2) is accepted as mentioned in section 9(4);~~

~~(iii) the Commission makes a determination under section 9(1) upholding the complaint;~~  
~~and~~

~~(b) the amount of the levy has not been determined as nil and the Commission does not in accordance with rules made under section 32(1) waive the requirement to pay the levy.~~

(3) Any—

(a) sum due by a practitioner to the Commission under subsection (1);

(b) interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid, may be recovered by it (as a debt) from the practitioner.

~~(4) If any person who is liable under subsection (1) to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct.~~

(4) If any practitioner who is liable under subsection (1) to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late—

(a) where the practitioner is an individual, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the practitioner,

(b) where the practitioner is not an individual and where the failure or late payment involves the connivance or consent of, or is attributed to the neglect of, a responsible official of the practitioner, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the responsible official.

(5) In subsection (4), a “responsible official” of a practitioner is—

(a) where the practitioner is a company, a director, secretary, manager or other similar officer,

(b) where the practitioner is a limited liability partnership, a member,

(c) where the practitioner is an ordinary partnership, a partner,

(d) where the practitioner is another body or association, a person who is concerned in the management or control of its affairs,

but in each case also extends to a person purporting to act in such a capacity.



## **28A Unregulated providers of legal services: voluntary register and annual contribution**

(1) The Commission may establish and maintain a voluntary register of unregulated providers of legal services.

(2) The Commission is to determine, in accordance with its rules under section 32(1), the information to be included in a register established under subsection (1).

(3) An unregulated provider of legal services may make a request to be entered in a register established under subsection (1).

(4) An unregulated provider of legal services who is entered in a register established under subsection (1) must pay to the Commission a contribution (referred to in this Part as “the annual contribution”).

(5) The amount of the annual contribution may be—

(a) different for unregulated providers of legal services who are individuals and unregulated providers of legal services who are not,

(b) of different amounts (including nil) in different circumstances.

(6) The Commission must make the register accessible by members of the public in such form and manner as it considers appropriate.

(7) In this section, a reference to an unregulated provider of legal services is to a person who provides legal services to the public for fee, gain or reward but who is not a practitioner.

## **28B Unregulated providers of legal services: upheld services complaints and complaints contribution**

(1) An unregulated provider of legal services against whom a services complaint is made

must pay to the Commission, in the circumstances specified in rules made under section 32(1), a contribution in relation to the complaint (referred to in this Part as “the complaints contribution”).

(2) The amounts of the complaints contribution may be—

(a) of different amounts for different unregulated providers of legal services according to the amount of annual contributions (if any) paid by an unregulated provider of legal services,

(b) of different amounts (including nil) in different circumstances.

(3) In this section, a reference to an unregulated provider of legal services has the same meaning as in section 28A(7).

## 29 Amount of levies and consultation

(1) The amount of the—

(a) annual general levy;

(b) complaints levy,

(c) annual contribution,

(d) complaints contribution,

in respect of each financial year is such amount as may be determined by the Commission, having had regard to any views expressed in its consultation under subsection (4) in respect of the financial year in question.

(2) The amount of the annual general levy ~~must be the same amount for each of the individuals who are liable under section 27(1) to pay it; but rules made under section 32(1) may provide for circumstances in which the Commission may waive a portion of the amount~~

~~which would otherwise require to be paid may be—~~

(a) of different amounts for different persons (or persons of different descriptions) who are liable under section 27(1) to pay it, including different amounts for persons who are individuals and persons who are not,

(b) of different amounts (including nil) in different circumstances based on such criteria (such as the size and income of a person who is not an individual who is liable under section 27(1) to pay the annual general levy) as rules made under section 32(1) may specify.

(2A) Rules under section 32(1) may provide for circumstances in which the Commission may waive a portion of the amount of annual general levy which would otherwise require to be paid.

(3) The Commission may determine different amounts (including an amount of nil) for the complaints levy in different circumstances.

(4) The Commission must, in January each year, consult each relevant professional organisation and its members [, and the Scottish Ministers,]<sup>1</sup> on the Commission's proposed budget for the next financial year.

(5) The proposed budget must—

(a) include—

(i) an estimate as respects resource requirements;

(ii) the proposed amount of the annual general levy, the complaints levy, the annual contribution and the complaints contribution ~~and the complaints levy~~;

(b) be accompanied by information as to the Commission's projected work plan for the next financial year.

~~(6) Each relevant professional organisation must, for the purpose of informing the Commission in relation to—~~

~~(a) the inclusion in the Commission's proposed budget for each financial year of the proposed amount of the annual general levy;~~

~~(b) the Commission's determination under subsection (1) of the amount of the annual general levy in respect of each financial year;~~

~~provide the Commission with an estimate of the number of persons as respects whom it is the relevant professional organisation and who it anticipates should be liable under section 27(1) to pay the annual general levy for the financial year concerned.~~

(6) For the purpose mentioned in subsection (6A)—

(a) each relevant professional organisation must provide the Commission with an estimate of the number of persons as respects whom it is the relevant professional organisation and who it anticipates should be liable under section 27(1) to pay the annual general levy for the financial year concerned, and

(b) each relevant professional organisation that is a category 1 regulator must assist the Commission with its enquires in relation to the size and income of each authorised legal business that is authorised by the organisation to provide legal services.

(6A) The purpose referred to in subsection (6) is the purpose of informing the Commission in relation to—

(a) the inclusion in the Commission's proposed budget for each financial year of the proposed amount of the annual general levy,

(b) the Commission's determination under subsection (1) of the amount of the annual general levy in respect of each financial year.

(7) The Commission must secure so far as is reasonably practicable that, taking one financial year with another, the amount of the annual general levy, the complaints levy, the annual contribution and the complaints contribution ~~and the complaints levy~~ is reasonably sufficient to meet its expenditure.

(8) The Commission must, no later than 31 March in each year, publish the responses it has received in the consultation carried out by it under subsection (4) in the immediately preceding January.

(9) Subsection (8) does not apply to responses which are subject to an express request in writing for confidentiality.

(10) The Commission must lay a copy of the finalised budget before the Parliament no later than 30 April in each year.

### **30 Grants or loans by the Scottish Ministers**

(1) The Scottish Ministers may make grants to the Commission of such amounts as they consider appropriate.

(2) Any grant under this section may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.

(3) For the purpose of the exercise of any of its duties or powers under this Part—

(a) the Commission may, subject to such conditions as the Scottish Ministers think fit, borrow from them;

(b) the Scottish Ministers may lend to the Commission,

sums of such amounts as the Ministers may determine.

(4) Any loan made in pursuance of subsection (3) is to be repaid to the Scottish Ministers at such times and by such methods, and interest on the loan is to be paid to them at such times and at such rates, as they may from time to time direct.

### **31 Guarantees**

(1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by the Commission.

(2) Immediately after any guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.

(3) Where any sum is paid out in fulfilment of a guarantee under this section, the Commission must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—

(a) payments of such amount as they may so direct in or towards repayment of the sums so paid out;

(b) payments of interest, at such rate as they may so direct, on the amount outstanding for the time being in respect of sums so paid out.

#### *Rules as to Commission's practice and procedure*

### **32 Duty of Commission to make rules as to practice and procedure**

(1) The Commission must make rules as to its practice and procedure and, as soon as practicable after making or varying those rules, publish them and make them available to the public in a form which is readily accessible.

(2) Schedule 3 makes further provision as respects provision which—

(a) must be included;

(b) may in particular be included,

in the rules.

- (3) The rules may make different provision for different categories of complaint.
- (4) The Commission must keep the rules under review and must vary the provisions of the rules whenever it considers it appropriate to do so.
- (5) The Commission must, before making rules or varying the rules, consult with—
  - (a) the Lord President of the Court of Session;
  - (b) the Scottish Ministers;
  - (c) the relevant professional organisations;
  - (d) ~~such~~ the independent advisory panel established under paragraph 11A of schedule 1 and such other groups of persons representing consumer interests as it considers appropriate,
  - (e) such groups of persons representing the interests of the legal profession as it considers appropriate,

as to the proposed content of the rules to be made or varied.

*Forwarding complaints, advice, monitoring, etc*

**33 Duty of relevant professional organisations to forward complaints to Commission**

- (1) Where a relevant professional organisation receives a complaint from a person other than the Commission about—
  - (a) the conduct of, or any services provided by, a practitioner;
  - (b) its handling of a conduct complaint remitted to it under section 6(2)(a) ~~or 15(5)(a)~~,

(c) the compliance by any authorised legal business that is authorised by the organisation to provide legal services with—

(i) the organisation’s practice rules forming part of the rules for authorising and regulating the authorised legal business made under (or for the purposes of) section 41(1)(a) of the 2023 Act), or

(ii) the terms on which the authorisation of the authorised legal business is granted by the organisation including any conditions or restrictions attached to the grant,

it must without delay send the complaint and any material which accompanies it to the Commission.

(2) Subsection (1)(a) is subject to section 33A(2) (conduct complaint identified by a relevant professional organisation).

(3) Subsection (1)(c) is subject to section 33B(2) (regulatory complaint identified by relevant professional organisation).

### **33A Conduct complaint identified by relevant professional organisation**

(1) This section applies where, in the course of exercising any of its functions conferred by or under this Act or the 2023 Act other than those relating to a handling complaint, a relevant professional organisation identifies a matter of concern regarding the conduct of a practitioner who is authorised by it to provide legal services (or whose firm or employing practitioner is so authorised).

(2) Despite subsection (1)(a) of section 33, the relevant professional organisation need not refer the matter (or any material relating to it) to the Commission under that subsection and may instead treat the matter as if it were a conduct complaint remitted to it under section 6(2) (and the conduct complaint is to be treated for the purposes of this Part as having been made by the relevant professional organisation).



(3) Where the relevant professional organisation treats the matter as mentioned in subsection (2), the relevant professional organisation must—

(a) have regard to the interests of any clients (or former clients) of the practitioner to whom the complaint relates (or clients or former clients of the practitioner’s firm or the employing practitioner) who may have been affected by the conduct of the practitioner, and

(b) as soon as practicable send details of the matter and any material relating to it to the Commission.

(4) For the purposes of subsection (3)(a), where the relevant professional organisation upholds the conduct complaint against the practitioner, the organisation must notify any client (or former client) of the practitioner (or the practitioner’s firm or the employing practitioner) whom it considers was directly affected by the conduct of the practitioner of the outcome of the complaint.

(5) Where the Commission receives details about a matter (and any material relating to it) under subsection (3)(b) from the relevant professional organisation, the Commission must consider the details (and any related material) provided to it to consider whether the matter constitutes a services complaint (to any extent).

### **33B Regulatory complaint identified by relevant professional organisation**

(1) This section applies where, in the course of exercising any of its functions conferred by or under this Act or the 2023 Act other than those relating to a handling complaint, a relevant professional organisation itself identifies a matter of concern suggesting that an authorised legal business that is authorised by it to provide legal services is failing (or has failed) to comply with a matter mentioned in section 2(1)(c)(i) or (ii).

(2) Despite subsection (1)(c) of section 33, the relevant professional organisation need not refer the regulatory complaint (or any material relating to it) to the Commission and may treat the regulatory complaint as if it had been remitted to it by the Commission under section 7A(2)

(and the regulatory complaint is to be treated for the purposes of this Part as having been made by the relevant professional organisation).

(3) Where the relevant professional organisation treats the regulatory complaint as mentioned in subsection (2), the organisation must as soon as practicable send details of the regulatory complaint (and any material relating to it) to the Commission.

(4) Where the Commission receives details about a regulatory complaint (and any material relating to it) under subsection (3) from the relevant professional organisation, the Commission must consider the details (and any related material) provided to it to consider whether the matter constitutes a services complaint (to any extent).

### 34 Commission's duty to provide advice

(1) The Commission must, so far as is reasonably practicable, provide advice to any person who requests it as respects the process of making a ~~services complaint or a handling~~ complaint to it.

(2) Where the Commission receives a complaint suggesting what purports to be professional misconduct or unsatisfactory professional conduct by a practitioner who is ~~not an individual a firm of solicitors or an incorporated practice~~—

(a) it must inform the person that a complaint to it suggesting such misconduct or such conduct may be made only against a named practitioner who is an individual;

(b) where the complaint received is not about a named practitioner who is an individual, it must so far as is reasonably practicable offer advice to the person with a view to assisting the person to reformulate the complaint so that it is about such a named practitioner.

(3) Where a person in requesting or being offered such advice expresses a preference for receiving it by a particular means (as, for example, in writing, by telephone, by means of a recording or an explanation in person), the Commission must, so far as is reasonably

practicable, give effect to the preference.

### 35 Services complaints: monitoring, reports, protocols and information sharing

(1) The Commission must monitor practice and identify any trends in practice as respects the way in which practitioners have dealt with matters that result in services complaints being dealt with by the Commission under sections 8 to 12.

(2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.

(3) The Commission must—

(a) enter into protocol with the relevant professional organisations as respects the sharing of information by it with them in relation to **the Commission's functions relating to services complaints dealt with by it.**

~~(i) numbers of services complaints dealt with by it;~~

~~(ii) such trends as it may identify in relation to such complaints;~~

~~(iii) settlements proposed by it under section 9(2), which are accepted as mentioned in subsection (4) of that section;~~

~~(iv) the substance of any services complaints which might be relevant to section 31(3) of the 1986 Act;~~

~~(v) determinations by it under section 9(1) upholding services complaints;~~

~~(vi) failure by practitioners to comply with directions by it under section 10(2), notice by it under section 16 or 17(1) or requirements by it under section 37(3);~~

(b) share information with the relevant professional organisations in accordance with the protocol.

(4) The relevant professional organisations must enter into protocol with the Commission for the purposes of subsection (3)(a).

### **36 Conduct and regulatory complaints: monitoring and reports** ~~complaints: monitoring, reports, guidance and recommendations~~

(1) The Commission must monitor practice and identify any trends in practice as respects the way in which—

~~(a) practitioners have dealt with matters that result in conduct complaints being remitted to the relevant professional organisations under section 6(2)(a) or 15(5)(a);~~

(a) practitioners have dealt with matters that result in—

(i) conduct complaints being remitted to the relevant professional organisations under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),

(ii) regulatory complaints being remitted to the relevant professional organisations under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).

(b) the relevant professional organisations have dealt with conduct complaints **or regulatory complaints** so remitted.

(2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.

~~(3) The Commission may—~~

~~(a) give guidance to the relevant professional organisations as to the timescales within which they should aim to complete their investigation of or, as the case may be, determine conduct complaints remitted to them under section 6(2)(a) or 15(5)(a);~~

~~(b) make recommendations to any relevant professional organisation about the organisation's procedures for, and methods of dealing with, conduct complaints so remitted to it.~~

~~(4) Each relevant professional organisation to which the Commission makes a recommendation under subsection (3)(b) must—~~

~~(a) consider the recommendation;~~

~~(b) notify the Commission in writing of—~~

~~(i) the results of the consideration;~~

~~(ii) any action the organisation has taken or proposes to take in consequence of the recommendation.~~

(5) The Commission may carry out, for any of the purposes of this section, audits of the records held by the relevant professional organisations relating to ~~conduct complaints remitted to them under section 6(2)(a) or 15(5)(a)—~~

(a) conduct complaints remitted to them under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),

(b) regulatory complaints remitted to them under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).

### **36A Conduct and regulatory complaints: setting of minimum standards by the Commission**

(1) The Commission may issue guidance to relevant professional organisations relating to how they are to investigate and determine the following complaints—

(a) conduct complaints that are remitted to them by the Commission under section 6(2)

(or treated as having been remitted to them under that section by virtue of section 33A(2)),

(b) regulatory complaints that are remitted to them by the Commission under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).

(2) Guidance under subsection (1) may in particular—

(a) set minimum standards for relevant professional organisations in relation to the matters mentioned in that subsection,

(b) include guidance as to the timescales within which relevant professional organisations should aim to complete their investigation of, or determine, complaints.

(3) Guidance under subsection (1)—

(a) may make different provision for—

(i) different types of complaint,

(ii) different acts or omissions (or series of acts or omissions) to which complaints may relate,

(iii) different types of practitioner against whom complaints may be made,

(b) may be issued to—

(i) each relevant professional organisation,

(ii) a particular relevant professional organisation,

(iii) relevant professional organisations of a particular description.

(4) Before issuing guidance under subsection (1) that sets minimum standards, the Commission must consult each relevant professional organisation concerned in relation to—

(a) the Commission's initial proposals for the minimum standards that are to be set out in

the guidance, and

(b) a subsequent draft of the guidance that includes the proposed minimum standards.

(5) The Commission must publish any guidance issued under subsection (1) in such manner as it considers appropriate as soon as reasonably practicable after issuing the guidance.

### 37 Obtaining of information from relevant professional organisations

(1) The Commission may require any relevant professional organisation to—

(a) provide it with such information, being information which is within the knowledge of the organisation, as the Commission considers relevant for any of the purposes of section 23, 24 or 36;

(b) to produce to it such documents, being documents which are within the possession or control of the organisation, as the Commission considers relevant for any of those purposes.

(2) The information required to be provided or the documents required to be produced under subsection (1) may include information or, as the case may be, documents obtained by the relevant professional organisation from a practitioner while investigating a conduct complaint against the practitioner remitted to it under section 6(2)(a) (or treated as having been remitted to it under that section by virtue of section 33A(2)) ~~or 15(5)(a)~~; and the organisation must comply with such a requirement.

(2A) Subsection (1) does not require the provision of a document or information to the Commission that is subject to legal privilege.

(2B) But subsection (2A) does not prevent the disclosure of a document or information that is the subject of another right of confidentiality (regardless of whether or not the client of the practitioner, practitioner's firm or employing practitioner concerned consents to the disclosure).

(2C) For the purpose of subsection (2A), a document or information is subject to legal privilege

if it constitutes a communication—

(a) between the practitioner and the practitioner's client, or

(b) made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

(3) Where any information required by the Commission under subsection (1) is not within the knowledge of the relevant professional organisation, or any documents required to be produced under that subsection are not within the possession or control of the organisation, the Commission may require the practitioner concerned—

(a) to provide it with that information in so far as it is within the knowledge of the practitioner;

(b) to produce to it those documents if they are within the practitioner's possession or control.

(4) Schedule 2 makes further provision about the powers of the Commission under this section.

### **38 Efficient and effective working**

(1) In relation to any investigation or report undertaken by it under this Act, the Commission must liaise with the relevant professional organisation with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the relevant professional organisation.

(2) In relation to any investigation or report undertaken by it under this Act, each relevant professional organisation must liaise with the Commission with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be



undertaken, by the Commission.

### **39 Monitoring effectiveness of guarantee funds etc.**

(1) The Commission may monitor the effectiveness of—

(a) the Scottish Solicitors Guarantee Fund vested in the Society and controlled and managed by **the regulatory committee of** the Council under section 43(1) of the 1980 Act (“the Guarantee Fund”);

(b) arrangements carried into effect by the Society under section 44(2) of that Act (“the professional indemnity arrangements”);

(c) any funds or arrangements maintained by any relevant professional organisation which are for purposes analogous to those of the Guarantee Fund or the professional indemnity arrangements as respects its members.

**(1A) The Commission may issue guidance (which may set minimum standards) to relevant professional organisations relating to the operation and effectiveness of the Guarantee Fund and any fund maintained by a relevant professional organisation which are for purposes analogous to those of the Guarantee Fund.**

(2) The Commission may make recommendations to the relevant professional organisation concerned about the effectiveness (including improvement) of ~~the Guarantee Fund~~, the professional indemnity arrangements or any such ~~funds or~~ arrangements as are referred to in subsection (1)(c).

(3) The Commission may request from the relevant professional organisation such information as the Commission considers relevant to its functions under subsections (1), **(1A)** and (2).

(4) Where a relevant professional organisation fails to provide information requested under subsection (3), it must give reasons to the Commission in respect of that failure.

(5) Guidance under subsection (2) may be issued to—

- (a) each relevant professional organisation,
- (b) a particular relevant professional organisation,
- (c) relevant professional organisations of a particular description.

(6) Before issuing guidance under subsection (2) that sets minimum standards, the Commission must consult each relevant professional organisation concerned in relation to—

- (a) the Commission's initial proposals for the minimum standards that are to be set out in the guidance, and
- (b) the subsequent draft of the guidance that includes the proposed minimum standards.

(7) The Commission must publish any guidance issued under subsection (1A) in such manner as it considers appropriate as soon as reasonably practicable after issuing the guidance.

#### **40 How practitioners deal with complaints: best practice notes**

(1) The Commission may issue guidance to the relevant professional organisations or to practitioners as respects how practitioners deal with complaints made to them about—

- (a) their professional conduct, **the professional services provided by them or regulatory matters,** ~~or the professional services provided by them;~~
- (b) the professional conduct of, or professional services provided by, any of their employees who are practitioners,

and any such guidance may recommend or include recommendations as respects standards for systems by practitioners for dealing with such complaints.

(2) **Guidance under subsection (1) may in particular set minimum standards for practitioners**

relating to how they are to deal with complaints made to them about the matters mentioned in paragraph (a) or (b) of that subsection.

(3) The Commission may issue guidance (which may set minimum standards) to relevant professional organisations relating to their role overseeing how practitioners deal with complaints to them made about the matters mentioned in subsection (1)(a) or (b).

(4) The Commission may issue guidance (which may set minimum standards) to practitioners in respect of practice (and any trends in practice) identified by it in the way in which practitioners deal with matters which the Commission considers contributes to—

(a) services complaints being dealt with by the Commission under sections 8 to 12,

(b) conduct complaints being remitted to the relevant professional organisations under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),

(c) regulatory complaints being remitted to the relevant professional organisations under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).

(5) Guidance under subsection (1), (3) or (4) may make different provision for—

(a) different types of complaint,

(b) different acts or omissions (or series of acts or omissions) to which complaints may relate,

(c) different types of practitioner against whom complaints may be made.

(6) Guidance under subsection (3) may be issued to—

(a) each relevant professional organisation,

(b) a particular relevant professional organisation,

(c) relevant professional organisations of a particular description.

(7) In subsection (1), “regulatory matters” means, in relation to an authorised legal business, failure by the authorised legal business to comply with either of the matters mentioned in section 2(1)(c)(i) or (ii).

(8) Where the Commission issues guidance under subsection (1) or (4) which sets minimum standards for practitioners, the relevant professional organisations for the practitioners to whom the minimum standards relate must notify the practitioners of the minimum standards set.

(9) Before issuing guidance under subsection (3) that sets minimum standards, the Commission must consult each relevant professional organisation concerned in relation to—

(a) the Commission’s initial proposals for the minimum standards that are to be set out in the guidance, and

(b) the subsequent draft of the guidance that includes the proposed minimum standards.

(10) The Commission must publish any guidance issued under subsection (1A) in such manner as it considers appropriate as soon as reasonably practicable after issuing the guidance.

#### **40A Enforcement of minimum standards in relation to relevant professional organisations**

(1) A relevant professional organisation must meet any minimum standards set by the Commission that apply to it.

(2) For the purpose of considering whether a relevant professional organisation is meeting any minimum standards that apply to it, the Commission may require from the relevant professional organisation—

(a) the production of information as to how it is meeting the minimum standards, and

(b) if the Commission is of the view that the relevant professional organisation is not (or

has not been) meeting the minimum standards, an explanation of why the minimum standards are not being (or have not been) met.

(3) Subsection (4) applies where the Commission considers that a relevant professional organisation, without reasonable excuse, is failing (or has failed) to meet the minimum standards in respect of which information was sought under subsection (2).

(4) The relevant professional organisation and the Commission (“the parties”) must decide whether they are content for the dispute relating to the alleged failure to meet the minimum standards to be submitted to arbitration for resolution that is final and binding on the parties.

(5) If both parties agree that the dispute is to be submitted to an arbitrator, the arbitrator is to be appointed—

(a) jointly by the parties, or

(b) in the absence of agreement for joint appointment, by the Lord President on a request made by either (or both) of the parties.

(6) If the dispute is not submitted to arbitration, the Commission may direct the relevant professional organisation to take such steps as it considers appropriate within such period of time as may be specified in the direction.

(7) The period of time specified in a direction under subsection (6) for the taking of such steps by the relevant professional organisation as the Commission considers appropriate may be extended by agreement between the parties.

(8) The relevant professional organisation must, as soon as practicable following the expiry of the period of time referred to in subsection (6) (or such extended period of time referred to in subsection (7)), notify the Commission in writing of—

(a) the steps taken by or on behalf of the relevant professional organisation to comply with the direction, or

(b) if no such steps have been taken, or if not all steps necessary to comply with the

direction have been taken, an explanation of the reason (or reasons) for the failure to comply with the direction.

(9) If the Commission considers that a relevant professional organisation has failed to comply with a direction under subsection (6), the Commission may apply to the court for the relevant professional organisation to be dealt with in accordance with subsection (10).

(10) Where such an application is made, the court may inquire into the matter and after hearing—

(a) any witnesses who may be produced against or on behalf of the relevant professional organisation, and

(b) any statement that may be offered in defence,

may order the relevant professional organisation to comply with the direction.

(11) In this section, “minimum standards” means minimum standards that are set out in any guidance issued under—

(a) section 36A(1),

(b) section 39(1A),

(c) section 40(3).

#### **40B Enforcement of minimum standards in relation to practitioners**

(1) A practitioner must meet any minimum standards set by the Commission that apply to the practitioner.

(2) For the purpose of considering whether a practitioner is meeting any minimum standards that apply to the practitioner, the Commission may require from the practitioner—

(a) the production of information as to how the practitioner is meeting the minimum

standards, and

(b) if the Commission is of the view that the practitioner is not (or has not been) meeting the minimum standards, an explanation of why the minimum standards are not being (or have not been) met.

(3) Where the Commission considers that a practitioner, without reasonable excuse, is failing (or has failed) to meet the minimum standards in respect of which information was sought under subsection (2), the Commission may direct the practitioner to take such steps as it considers appropriate within such period of time as may be specified in the direction.

(4) The period of time specified in a direction under subsection (3) for the taking of such steps by the practitioner as the Commission considers appropriate may be extended by agreement between the Commission and the practitioner.

(5) The practitioner must, as soon as practicable following the expiry of the period of time referred to in subsection (3) or such extended period of time referred to in subsection (4), notify the Commission in writing of—

(a) the steps taken by or on behalf of the practitioner to comply with the direction, or

(b) if no such steps have been taken, or if not all steps necessary to comply with the direction have been taken, an explanation of the reason (or reasons) for the failure to comply with the direction.

(6) If the Commission considers that a practitioner has failed to comply with a direction under subsection (3), the Commission may apply to the court for the practitioner to be dealt with in accordance with subsection (7).

(7) Where such an application is made, the court may inquire into the matter and after hearing—

(a) any witnesses who may be produced against or on behalf of the practitioner, and

(b) any statement that may be offered in defence,

may order the practitioner to comply with the direction.

(8) In this section, “minimum standards” means minimum standards that are set out in any guidance issued under—

(a) section 40(1),

(b) section 40(4).

### *Miscellaneous*

#### **41 Power by regulations to amend duties and powers of Commission**

(1) The Scottish Ministers may, after consulting—

(a) the Commission;

(b) the relevant professional organisations;

(c) such other persons or groups of persons as they consider appropriate,

by regulations modify the provisions of this Part for the purposes of adjusting the duties imposed, or the powers conferred, by it on the Commission (including imposing new duties or conferring new powers).

(2) Regulations under subsection (1) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of that subsection (including modification of any enactment, instrument or document).

#### **42 Reports: privilege**

For the purposes of the law of defamation, the publication of any report under section 13(1),



23(8), 24, 35(2), 36(2) or paragraph 16 of schedule 1 is privileged unless the publication is proved to be made with malice.

### **43 Restriction upon disclosure of information: Commission**

(1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.

(2) The information is information—

(a) contained in a conduct complaint, services complaint, **regulatory complaint** or handling complaint;

(b) which is given to or obtained by the Commission or any person acting on its behalf in the course of, or for the purposes of—

(i) any consideration of such a complaint;

(ii) an investigation (including any report of such an investigation) into a services complaint, **a regulatory complaint** or a handling complaint.

(3) Such information may be disclosed—

(a) for the purpose of enabling or assisting the Commission to exercise any of its functions;

(b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.

(4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, the Commission is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

#### **44 Exemption from liability in damages**

(1) Neither the Commission nor any person who is, or is acting as, a member of the Commission or an employee of the Commission is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Commission's functions.

(2) Subsection (1) does not apply—

(a) if the act or omission is shown to have been in bad faith;

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c.42).

#### **45 Giving of notices etc. under Part 1**

(1) Any notice which is required under this Part to be given in writing is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(2) Any notice which is required under this Part to be given to any person—

(a) is duly given—

(i) where the person is not an incorporated practice, if it is left at, or delivered or sent by post to, the person's last known place of business or residence;

(ii) where the person is an incorporated practice, if it is left at or delivered or sent by post to the practice's registered office;

(iii) where the person is a practitioner who is a firm of solicitors or an incorporated practice, if it is sent to the person by electronic means but only if the practitioner agrees to that means of sending;

(iv) where the person is an individual, if it is sent to the person by electronic means but only if the individual agrees to that means of sending;

(v) to any person, if it is given in such other manner as may be prescribed by regulations by the Scottish Ministers;

(b) if permitted by paragraph (a) to be sent, and sent, by electronic means is, unless the contrary is proved, deemed to be delivered on the next working day which follows the day on which the notice is sent.

(3) Regulations under subsection (2)(a)(v) may—

(a) in particular provide that notice required to be given to a person who is not an individual may be given by addressing or sending it to such person appointed by the person for that purpose or to such person falling within such other categories prescribed in the regulations as appear to the Scottish Ministers to be appropriate;

(b) make different provision for different purposes.

(4) In subsection (2)(b), “*working day*” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c.80), is a bank holiday in Scotland.

## 46 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“*advocate*” means a member of the Faculty of Advocates;

“*annual general levy*” has the meaning given by section 27(1);

“*authorised legal business*” is a legal business (within the meaning of section 39(2) of the 2023 Act) that is authorised to provide legal services by a category 1 regulator,

“category 1 regulator” means a body that regulates the provision of legal services and which has been assigned as a category 1 regulator in or under section 8 of the 2023 Act,

“category 2 regulator” means a body that regulates the provision of legal services and which has been assigned as or deemed a category 2 regulator in or under section 8 of the 2023 Act,

“*client*” —

(a) (in relation to any matter in which the practitioner has been instructed) includes any person on whose behalf the person who gave the instructions was acting;

(b) where the practitioner is an employee of a person who is not a practitioner, includes (in relation to any matter in which the practitioner has been instructed by the employer) the employer;

“*complainer*” means the person who makes the complaint and, where the complaint is made by the person on behalf of another person, includes that other person;

“*complaint*” includes any expression of dissatisfaction;

“*complaints levy*” has the meaning given by section 28(1);

“*the Commission*” means the Scottish Legal ~~Complaints~~ **Services** Commission;

“*conduct complaint*” has the meaning given by section 2(1)(a);

“*conveyancing practitioner*” means a person registered under section 17 of the 1990 Act in the register of conveyancing practitioners;

“*the Council*” means the Council of the Law Society of Scotland;

“*the court*” means the Court of Session;

“*employing practitioner*” has the meaning given by ~~section 2(1ZB)~~ **section 4(4)(a)**;

“*executory practitioner*” means a person registered under section 18 of the 1990 Act in the

register of executry practitioners;

“*handling complaint*” has the meaning given by [section 23(1A)]<sup>1</sup>;

“*inadequate professional services*” —

(a) means, as respects a practitioner who is—

(i) an advocate, professional services which are in any respect not of the quality which could reasonably be expected of a competent advocate;

(ii) a conveyancing practitioner or an executry practitioner, professional services which are in any respect not of the quality which could reasonably be expected of a competent conveyancing practitioner or, as the case may be, a competent executry practitioner;

~~(iii) a firm of solicitors or an incorporated practice, professional services which are in any respect not of the quality which could reasonably be expected of a competent firm of solicitors or, as the case may be, a competent incorporated practice;~~

~~(iv) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, professional services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right;~~

(iii) an authorised legal business, legal services which are in any respect not of the quality which could reasonably be expected of a competent authorised legal business,

(iv) a person exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act), legal services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right,

(v) a solicitor, professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor;

(vi) a registered European or foreign lawyer, professional services that are in any respect

not of the quality which could reasonably be expected of a competent lawyer of that type;

(b) includes any element of negligence in respect of or in connection with the services,

and cognate expressions are to be construed accordingly;

“*incorporated practice*” has the meaning given by section 34(1A)(c) of the 1980 Act;

“*legal services*” has the meaning given by section 6 of the 2023 Act,

“*practising certificate*” has the meaning given by section 4 of the 1980 Act;

“*practitioner*” means—

(a) an advocate and includes any advocate whether or not a member of the Faculty of Advocates at the time when it is suggested the conduct complained of occurred or the services complained of were provided and notwithstanding that subsequent to that time the advocate has ceased to be such a member;

(b) a conveyancing practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

(c) an executry practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

~~(d) a firm of solicitors, whether or not since that time there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner or the firm has ceased to practise;~~

(d) an authorised legal business, whether or not since that time there has been any change in the persons exercising the management and control of the business, the business has ceased to be authorised to provide legal services by a category 1 regulator or the business has ceased to operate,

~~(e) an incorporated practice, whether or not since that time there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) of the 1980 Act or has been wound up;~~

~~(f) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act and includes any such person, whether or not the person had acquired the right at that time and notwithstanding that subsequent to that time the person no longer has the right;~~

(f) a person exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act) and includes any such person, whether or not the person had acquired the right at that time and notwithstanding that subsequent to that time the person no longer has the right,

(g) a solicitor, whether or not the solicitor had a practising certificate in force at that time and notwithstanding that subsequent to that time the name of the solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;

(h) a registered European or foreign lawyer, whether or not registered at that time and notwithstanding that subsequent to that time the lawyer's registration has ceased to have effect or the lawyer has stopped practising;

“professional services” includes legal services,

“registered European or foreign lawyer” is to be construed in accordance with section 65(1) of the 1980 Act;

“regulatory complaint” (except in the case of section 57B) has the meaning given by section 2(1)(c),

~~“relevant professional organisation” means, in relation to a complaint as respects a practitioner who is—~~

~~(a) an advocate, the Faculty of Advocates;~~

~~(b) a conveyancing practitioner, an executry practitioner, a firm of solicitors or an incorporated practice, the Council;~~

~~(c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, the body which made a successful application under section 25 of that Act and of which the person is a member;~~

~~(d) a solicitor, the Council;~~

~~(e) a registered European or foreign lawyer, the Council;~~

“relevant professional organisation” means, in relation to a complaint as respects a practitioner who is regulated by—

(a) a category 1 regulator, that category 1 regulator,

(b) a category 2 regulator, that category 2 regulator,

“*the roll*” means the roll of solicitors kept by the Council by virtue of section 7(1) of the 1980 Act;

“*services complaint*” has the meaning given by section 2(1)(b);

“*the Society*” means the Law Society of Scotland;

“*solicitor*” means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of the 1980 Act;

“*unsatisfactory professional conduct*” means, as respects a practitioner who is—

(a) an advocate, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable advocate;

(b) a conveyancing practitioner or an executry practitioner, professional conduct which is



not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner or, as the case may be, a competent and reputable executry practitioner;

(c) a person exercising a right to **provide legal services acquired by virtue of Chapter 3 Part 1 of the 2023 Act (or section 27 of the 1990 Act)** ~~conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act~~, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable person exercising such a right;

(d) a solicitor, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor;

(e) a registered European or foreign lawyer, conduct that is not of the standard which could reasonably be expected of a competent and reputable lawyer of that type,

but which does not amount to professional misconduct and which does not comprise merely inadequate professional services; and cognate expressions are to be construed accordingly.

(2) For the avoidance of doubt, anything done by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not done in relation to any matter in which the Crown Counsel or procurator fiscal has been instructed by a client.

(3) For the avoidance of doubt, the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not in itself capable of constituting professional misconduct or unsatisfactory professional conduct.

(4) In subsections (2) and (3), “*procurator fiscal*” has the same meaning as in section 307 of the Criminal Procedure (Scotland) Act 1995 (c.46).

## **PART 2 – ~~CONDUCT AND~~ CONDUCT, SERVICES AND REGULATORY COMPLAINTS ETC.: OTHER MATTERS**

#### **47 Conduct complaints: duty of relevant professional organisations to investigate etc.**

(1) Where a conduct complaint is remitted to a relevant professional organisation under section 6(2)(a) (or treated as having been remitted to it under that section by virtue of section 33A(2)) ~~or 15(5)(a)~~, the organisation must, subject to such rules ~~section 15(1) and (6)~~, investigate it.

(2) After investigating a conduct complaint, the relevant professional organisation must make a written report to the complainer, ~~the practitioner and the Commission~~ ~~and the practitioner~~ of—

- (a) the facts of the matter as found by the organisation;
- (b) what action the organisation proposes to take, or has taken, in the matter.

(2A) A relevant professional organisation may proceed to investigate and make a written report in relation to a conduct complaint remitted to it as mentioned in subsection (1) even if the complainer withdraws the complaint (and in such case the conduct complaint is to be treated for the purposes of Part 1 and this Part as having been made by the relevant professional organisation).

(3) Each relevant professional organisation must ensure that its procedures for dealing with conduct complaints do not conflict with the duty imposed on it by section 24(4) or (5) in relation to any report sent to it under that section or any direction by the Commission under ~~section 24(2)~~ ~~section 24(6)~~.

(4) In this section and sections 48 to 52, words and expressions have the same meanings as in section 46.

#### **48 Conduct complaints and reviews: power of relevant professional organisations to examine documents and demand explanations**

(1) Where a relevant professional organisation is satisfied that it is necessary for it to do so

for the purposes of an investigation by it into a conduct complaint under section 47 or a review by it of a decision in relation to a conduct complaint, it may—

- (a) give notice in writing in accordance with subsection (2) to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner;
- (b) give notice in writing in accordance with subsection (4) to the complainer.

(2) Notice under subsection (1)(a) may require—

- (a) the production or delivery to any person appointed by the relevant professional organisation, at a time and place specified in the notice, of all documents mentioned in subsection (3) which are in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner and which relate to the matters to which the complaint relates (whether or not they relate also to other matters);
- (b) an explanation, within such period being not less than 21 days as the notice specifies, from the practitioner, the firm or, as the case may be, the employing practitioner regarding the matters to which the complaint relates.

(2A) Nothing in a notice under subsection (1) requires a practitioner, a practitioner's firm or an employing practitioner to provide a document or information that is subject to legal privilege.

(2B) But subsection (2A) does not prevent the disclosure of a document or information that is the subject of another right of confidentiality (regardless of whether or not the client of the practitioner, practitioner's firm or employing practitioner consents to the disclosure).

(2C) For the purpose of subsection (2A) a document or information is subject to legal privilege if it constitutes a communication—

- (a) between the practitioner, the practitioner's firm or the employing practitioner and the client of the practitioner, practitioner's firm or employing practitioner, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

(3) The documents are—

(a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner;

(b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the practitioner is the sole trustee or a co-trustee only with one or more of the practitioner's partners or employees or, as the case may be, where the practitioner is an incorporated practice of which the practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees.

(4) Notice under subsection (1)(b) may require—

(a) the production or delivery to any person appointed by the relevant professional organisation at a time and place specified in the notice, of all documents mentioned in subsection (5) which relate to the matters to which the complaint relates (whether or not they relate to other matters);

(b) an explanation, within such period being not less than 21 days as the notice specifies, from the complainer regarding the matters to which the complaint relates.

(5) The documents are all books, accounts, deeds, securities, papers and other documents in the possession or control of the complainer.

(6) Schedule 4 makes further provision about the powers of a relevant professional organisation under this section.

## **49 Conduct complaints: financial impropriety**

(1) If, in the course of an investigation into a conduct complaint under section 47, a relevant

professional organisation has reasonable cause to believe that the practitioner, the practitioner's firm (or any employee thereof) or, as the case may be, the employing practitioner, has been guilty of any financial impropriety it may apply to the court for an order under subsection (2).

(2) An order under this subsection is that no payment be made by any banker, building society or other body named in the order out of—

- (a) any banking account in the name of such practitioner or firm; or
- (b) any sum deposited in the name of such practitioner or firm,

without the leave of the court.

## **50 Power of relevant professional organisations to recover certain expenses**

(1) A relevant professional organisation is, subject to subsection (2), entitled to recover from a practitioner, the practitioner's firm or, as the case may be, the employing practitioner, in respect of whom it has taken any action by virtue of section 48(1)(a) or 49, any expenditure reasonably incurred by it in so doing.

(2) Expenditure incurred in taking action by virtue of section 48(1)(a) is recoverable under subsection (1) only where notice has been served under paragraph 2(a) of schedule 4 in connection with that action and—

- (a) no application has been made in consequence under paragraph 3 of that schedule; or
- (b) the court, on such an application, has made a direction under paragraph 4 of that schedule.

## **51 Powers in relation to documents and information from third parties**

(1) Where a relevant professional organisation has requested that documents or information in the possession or control of a person be produced for the purposes of an investigation by it into a conduct complaint under section 47 or a review by it of a decision in relation to a conduct complaint, and the person refuses or fails to produce the documents or information, the organisation may apply to the court for an order under subsection (2).

(2) An order by the court under this subsection may require a person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the relevant professional organisation within such time as the court may order.

(3) Subsections (3) to (7) of section 19 apply for the purposes of this section as they apply for the purposes of that section but subject to the modification that for the references in subsections (4) to (6) to “the Commission” substitute “the relevant professional organisation”.

## **52 Restriction upon disclosure of information: relevant professional organisations**

(1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.

(2) The information is information—

(a) contained in a conduct complaint;

(b) which is given to or obtained by a relevant professional organisation or any person acting on its behalf in the course of, or for the purposes of—

(i) any consideration of such a complaint;

(ii) an investigation (including any report of such an investigation) into such a complaint.

(3) Such information may be disclosed—

(a) for the purpose of enabling or assisting the relevant professional organisation to exercise any of its functions in relation to such a complaint;

(b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.

(4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, a relevant professional organisation is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

### **52A Conduct complaints: relevant professional organisation to take account of related services complaint**

Where a relevant professional organisation (or associated tribunal) upholds a conduct complaint against a practitioner and is considering what steps to take in relation to the practitioner, the relevant professional organisation (or tribunal) must take account of any decision by the Commission in relation to a services complaint relating to the same matter to which the conduct complaint relates.

### **52B Regulatory complaints: duty of regulator to investigate etc.**

(1) Where a regulatory complaint is remitted to the relevant professional organisation under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)), the relevant professional organisation must investigate it.

(2) After investigating a regulatory complaint, the relevant professional organisation must make a written report to the complainer, the practitioner and the Commission of—

(a) the facts of the matter as found by the relevant professional organisation, and

(b) what action the relevant professional organisation proposes to take, or has taken, in the matter in accordance with the rules for authorising and regulating legal businesses made by the relevant professional organisation under (or for the purposes of) section 41(1)(a) of the 2023 Act.

(3) Each relevant professional organisation must ensure that its procedures for dealing with regulatory complaints do not conflict with the duty imposed on it by section 24(4) in relation to any report sent to it under that section or any direction by the Commission under section 24(2).

(4) In this section, words and expressions have the same meanings as in section 46.

## **52C Regulatory complaints: application of powers and restrictions under sections 48 to 52**

(1) Sections 48 to 52 (and schedule 4) apply for the purposes of an investigation by a relevant professional organisation of a regulatory complaint under section 52B as they apply for the purposes of an investigation by a relevant professional organisation of a conduct complaint under section 47 with the modification referred to in subsection (2).

(2) The modification is that in each of sections 48 to 52 (and schedule 4), the references to the investigation of a conduct complaint under section 47 are to be treated as if they were references to the investigation of a regulatory complaint under section 52B.

## **53 Unsatisfactory professional conduct: solicitors**

(1) The 1980 Act is amended as follows.

(2) After section 42, insert—

### **“42ZA Unsatisfactory professional conduct: Council’s powers**



(1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner who is a solicitor is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—

(a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;

(b) given the solicitor an opportunity to make representations,

determine the complaint.

(2) Where a complaint is remitted to the Council under section 53ZA, the Council—

(a) must—

(i) notify the solicitor specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;

(ii) so investigate the complaint;

(iii) having so investigated the complaint and given the solicitor an opportunity to make representations, determine the complaint;

(b) may rely, in their investigation, on any findings in fact which the Tribunal makes available to them under section 53ZA(2) as respects the complaint.

(3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—

(a) shall censure the solicitor;

(b) may take any of the steps mentioned in subsection (4) which they

consider appropriate.

(4) The steps are—

(a) where the Council consider that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, to direct the solicitor to undertake such education or training as regards the law or legal practice as the Council consider appropriate in that respect;

(b) subject to subsection (6), to direct the solicitor to pay a fine not exceeding £2,000;

(c) where the Council consider that the complainer has been directly affected by the conduct, to direct the solicitor to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

(5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the Court upholding a complaint against the solicitor of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).

(6) The Council shall not direct the solicitor to pay a fine under subsection (4)(b) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

(7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine

imposed in the High Court.

(8) The Council shall intimate—

- (a) a determination under subsection (1) or (2);
- (b) any censure under subsection (3)(a);
- (c) any direction under subsection (4),

to the complainer and the solicitor specified in it by sending to each of them a copy of the determination, censure or, as the case may be, the direction and by specifying the reasons for the determination.

(9) A solicitor in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—

- (a) determination;
- (b) direction (whether or not he is appealing against the determination).

(10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.

(11) Where the Council have upheld the conduct complaint but have not directed the solicitor under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make

a direction under that subsection.

(12) A complainer to whom the Council have directed a solicitor under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.

(13) The Scottish Ministers may by order made by statutory instrument—

(a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

(b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)(c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

(14) A statutory instrument containing an order under—

(a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

(b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(15) In this section, “*complainer*” means the person who made the complaint and, where the complaint was made by the person on behalf of another person, includes that other person.

**42ZB Unsatisfactory professional conduct: Council’s powers to**

**monitor compliance with direction under section 42ZA(4)**

(1) The Council shall, by notice in writing, require every solicitor who is specified in—

(a) a direction made under section 42ZA(4); or

(b) such a direction as confirmed or varied on appeal by—

(i) the Tribunal; or

(ii) the Court,

to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.

(2) Where an appeal is made under section 42ZA(9) or (12) or 54A(1) or (2) against a direction made under section 42ZA(4), any notice under subsection (1)(a) above relating to the direction shall cease to have effect pending the outcome of the appeal.”.

(3) After section 53 (powers of Tribunal), insert—

**“53ZA Remission of complaint by Tribunal to Council**

(1) Where, after holding an inquiry under section 53(1) into a complaint of professional misconduct against a solicitor, the Tribunal—

(a) is not satisfied that he has been guilty of professional misconduct;

(b) considers that he may be guilty of unsatisfactory professional conduct,

it must remit the complaint to the Council.

(2) Where the Tribunal remits a complaint to the Council under subsection (1), it may make available to the Council any of its findings in fact in its inquiry into the complaint under section 53(1).

**53ZB Powers of Tribunal on appeal: unsatisfactory professional conduct**

- (1) On an appeal to the Tribunal under section 42ZA(9) the Tribunal—
- (a) may quash or confirm the determination being appealed against;
  - (b) if it quashes the determination, shall quash the censure accompanying the determination;
  - (c) may quash, confirm or vary the direction being appealed against;
  - (d) may, where it considers that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, direct the solicitor to undertake such education or training as regards the law or legal practice as the Tribunal considers appropriate in that respect;
  - (e) may, subject to subsection (5), fine the solicitor an amount not exceeding £2000;
  - (f) may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (2) On an appeal to the Tribunal under section 42ZA(10) the Tribunal—
- (a) may quash the determination being appealed against and make a determination upholding the complaint;
  - (b) if it does so, may, where it considers that the complainer has been

directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;

(c) may confirm the determination.

(3) On an appeal to the Tribunal under section 42ZA(11) the Tribunal may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

(4) On an appeal under section 42ZA(12) the Tribunal may quash, confirm or vary the direction being appealed against.

(5) The Tribunal shall not direct the solicitor to pay a fine under subsection (1)(e) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

(6) Any fine directed to be paid under subsection (1)(e) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.

(7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(8) The Scottish Ministers may by order made by statutory instrument—

(a) amend subsection (1)(e) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

(b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

(9) A statutory instrument containing an order under—

(a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

(b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(10) In this section, “*complainer*” has the same meaning as in section 42ZA.

### **53ZC Enforcement of Council direction: unsatisfactory professional conduct**

Where a solicitor fails to comply with a direction given by the Council under section 42ZA(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the Court) before the expiry of the period specified in the notice relating to that direction given to him under section 42ZB(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.”.



(4) After section 54 (appeals from decisions of Tribunal), insert—

**“54A Appeals from decisions of Tribunal: unsatisfactory professional conduct**

(1) A solicitor in respect of whom a decision has been made by the Tribunal under section 53ZB(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the Court against the decision.

(2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53ZB to which this subsection applies is intimated to him, appeal to the Court against the decision.

(3) Subsection (2) applies to the following decisions of the Tribunal under section 53ZB—

(a) a decision under subsection (1)(a) quashing the Council’s determination upholding the complaint;

(b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the solicitor pay compensation;

(c) a decision under subsection (1)(f) directing the solicitor to pay compensation;

(d) a decision under subsection (2)(b) not to direct the solicitor to pay compensation;

(e) a decision under subsection (2)(c) confirming the Council’s decision not to uphold the complaint;

(f) a decision under subsection (3) confirming the Council’s decision not to direct the solicitor to pay compensation;

(g) a decision under subsection (4) quashing the Council's direction that the solicitor pay compensation or varying the amount of compensation directed to be paid.

(4) On an appeal under subsection (1) or (2), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.

(5) A decision of the Court under subsection (4) shall be final.

(6) In this section, "*complainer*" has the same meaning as in section 42ZA."

(5) After section 55 (powers of Court), insert—

**“55A Powers of Court: unsatisfactory professional conduct**

(1) In the case of unsatisfactory professional conduct by a solicitor the Court may—

(a) fine the solicitor an amount not exceeding £2000;

(b) where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;

(c) find the solicitor liable in any expenses which may be involved in the proceedings before it.

(2) A decision of the Court under subsection (1) shall be final.

(3) The Scottish Ministers may by order made by statutory instrument—

(a) amend subsection (1)(a) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

(b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

(4) A statutory instrument containing an order under—

(a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

(b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(5) In this section, “*complainer*” has the same meaning as in section 42ZA.”.

(6) In section 65(1) (interpretation), after the definition of “unqualified person” insert

“*unsatisfactory professional conduct*” as respects a solicitor has the meaning given (as respects a practitioner who is a solicitor) by section 46 of the 2007 Act”.

## **54 Unsatisfactory professional conduct: conveyancing or executry practitioners**

(1) The 1990 Act is amended as follows.

(2) After section 20 (professional misconduct etc. by conveyancing or executry practitioners),

insert—

**“20ZA Remission of complaint by Tribunal to Council**

(1) Where, after holding an inquiry under section 20(2A) into a complaint of professional misconduct against a practitioner, the Tribunal—

- (a) are not satisfied that he has been guilty of professional misconduct;
- (b) consider that he may be guilty of unsatisfactory professional conduct,

they must remit the complaint to the Council.

(2) Where the Tribunal remit a complaint to the Council under subsection (1), they may make available to the Council any of their findings in fact in their inquiry into the complaint under section 20(2A).

**20ZB Unsatisfactory professional conduct**

(1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—

- (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
- (b) given the practitioner an opportunity to make representations,

determine the complaint.

(2) Where a complaint is remitted to the Council under section 20ZA, the Council—

- (a) must—

(i) notify the practitioner specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;

(ii) so investigate the complaint;

(iii) having so investigated the complaint and given the practitioner an opportunity to make representations, determine the complaint;

(b) may rely, in their investigation, on any findings in fact which the Tribunal make available to them under section 20ZA(2) as respects the complaint.

(3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—

(a) shall censure the practitioner;

(b) may take any of the steps mentioned in subsection (4) which they consider appropriate.

(4) The steps are—

(a) where the Council consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, to direct him to undertake such education or training as regards the law or legal practice concerned as the Council consider appropriate in that respect;

(b) subject to subsection (6) below, to direct the practitioner to pay a fine not exceeding £2,000;

(c) where the Council consider that the complainer has been directly affected by the conduct, to direct the practitioner to pay compensation

of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

(5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the court upholding a complaint against the practitioner of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).

(6) The Council shall not direct the practitioner to pay a fine under subsection (4)(b) above where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

(7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.

(8) The Council shall intimate—

- (a) a determination under subsection (1) or (2);
- (b) any censure under subsection (3)(a);
- (c) any direction under subsection (4),

to the complainer and the practitioner by sending to each of them a copy of the determination, the censure or, as the case may be, the direction and by specifying the reasons for the determination.

(9) A practitioner in respect of whom a determination upholding a

conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—

(a) determination;

(b) direction (whether or not he is appealing against the determination).

(10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.

(11) Where the Council have upheld the conduct complaint but have not directed the practitioner under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.

(12) A complainer to whom the Council have directed a practitioner under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.

(13) The Scottish Ministers may by order made by statutory instrument—

(a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

(b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)(c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

(14) A statutory instrument containing an order under—

(a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

(b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**20ZC Unsatisfactory professional conduct: Council's powers to monitor compliance with direction under section 20ZB(4)**

(1) The Council shall, by notice in writing, require every practitioner who is specified in—

(a) a direction made under section 20ZB(4); or

(b) such a direction as confirmed or varied on appeal by—

(i) the Tribunal; or

(ii) the court,

to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.

(2) Where an appeal is made under section 20ZB(9) or (12) or 20D(1) or (2) against a direction made under section 20ZB(4), any notice under



subsection (1) above relating to the direction shall cease to have effect pending the outcome of the appeal.”.

(3) After section 20A (review by Council of certain of their decisions), insert—

**“20B Unsatisfactory professional conduct: powers of Tribunal on appeal**

(1) On an appeal to the Tribunal under section 20ZB(9) the Tribunal—

- (a) may quash or confirm the determination being appealed against;
- (b) if they quash the determination, shall quash the censure accompanying the determination;
- (c) may quash, confirm or vary the direction being appealed against;
- (d) may, where they consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, direct him to undertake such education or training as regards the law or legal practice concerned as the Tribunal consider appropriate in that respect;
- (e) may, subject to subsection (5), fine the practitioner an amount not exceeding £2000;
- (f) may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

(2) On an appeal to the Tribunal under section 20ZB(10) the Tribunal—

(a) may quash the determination being appealed against and make a determination upholding the complaint;

(b) if they do so, may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct;

(c) may confirm the determination.

(3) On an appeal to the Tribunal under section 20ZB(11) the Tribunal may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

(4) On an appeal under section 20ZB(12) the Tribunal may quash, confirm or vary the direction being appealed against.

(5) The Tribunal shall not direct the practitioner to pay a fine under subsection (1)(e) where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

(6) Any fine directed to be paid under subsection (1)(e) shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.

(7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any

sheriffdom in Scotland.

(8) The Scottish Ministers may by order made by statutory instrument—

(a) amend subsection (1)(e) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

(b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

(9) A statutory instrument containing an order under—

(a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

(b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

## **20C Unsatisfactory professional conduct: enforcement of Council direction**

Where a practitioner fails to comply with a direction given by the Council under section 20ZB(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the court) before the expiry of the period specified in the notice relating to that direction given to the practitioner under section 20ZC(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## **20D Unsatisfactory professional conduct: appeal from decisions of Tribunal**

(1) A practitioner in respect of whom a decision has been made by the Tribunal under section 20B(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the court against the decision.

(2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 20B to which this subsection applies is intimated to him, appeal to the court against the decision.

(3) Subsection (2) applies to the following decisions of the Tribunal under section 20B—

(a) a decision under subsection (1)(a) quashing the Council's determination upholding the complaint;

(b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the practitioner pay compensation;

(c) a decision under subsection (1)(f) directing the practitioner to pay compensation;

(d) a decision under subsection (2)(b) not to direct the practitioner to pay compensation;

(e) a decision under subsection (2)(c) confirming the Council's decision not to uphold the complaint;

(f) a decision under subsection (3) confirming the Council's decision not to direct the practitioner to pay compensation;

(g) a decision under subsection (4) quashing the Council's direction

that the practitioner pay compensation or varying the amount of compensation directed to be paid.

(4) On an appeal under subsection (1) or (2), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the Tribunal relating to expenses.

(5) A decision of the court under subsection (4) shall be final.

### **20E Unsatisfactory professional conduct: powers of court on appeal**

(1) On an appeal under section 20D, the court may—

(a) fine the practitioner an amount not exceeding £2000;

(b) where it considers that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;

(c) find the practitioner liable in any expenses which may be involved in the proceedings before it.

(2) A decision of the court under subsection (1) shall be final.

(3) The Scottish Ministers may by order made by statutory instrument—

(a) amend subsection (1)(a) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;

(b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1)(b) by substituting for the amount for the time being

specified in that subsection such other amount as they consider appropriate.

(4) A statutory instrument containing an order under—

(a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;

(b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

### **55 Report by Commission to Council under section 10(2)(e)**

(1) After section 42ZB of the 1980 Act (as inserted by section 53(2) of this Act), insert—

#### **“42ZC Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council’s powers**

(1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner who is a solicitor, they may direct him to undertake such education or training as regards the law or legal practice as the Council consider appropriate in the circumstances.

(2) The Council shall by notice in writing—

(a) intimate a direction under subsection (1) to the solicitor;

(b) require the solicitor to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.

(3) Where an appeal is made under section 42ZD(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

**42ZD Direction under section 42ZC(2): appeal by practitioner**

(1) A solicitor in respect of whom a direction has been made under section 42ZC(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.

(2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.

(3) The solicitor may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the Court against the decision.

(4) On an appeal to the Court under subsection (3), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.

(5) A decision of the Court on an appeal under subsection (3) shall be final.”.

(2) After section 20ZC of the 1990 Act (as inserted by section 54(2) of this Act), insert—

**“20ZD Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council's powers**

(1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner, they may direct

him to undertake such education or training as regards conveyancing law or legal practice or, as the case may be, executry law or legal practice as they consider appropriate in the circumstances.

(2) The Council shall by notice in writing—

(a) intimate a direction under subsection (1) to the practitioner;

(b) require the practitioner to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.

(3) Where an appeal is made under section 20ZE(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

#### **20ZE Direction under section 20ZD(1): appeal by practitioner**

(1) A practitioner in respect of whom a direction has been made under section 20ZD(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.

(2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.

(3) The practitioner may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the court against the decision.

(4) On an appeal to the court under subsection (3), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the



Tribunal relating to expenses.

(5) A decision of the court on an appeal under subsection (3) shall be final.”.

## **56 Powers to fine and award compensation for professional misconduct etc.**

(1) In section 53 of the 1980 Act (powers of Tribunal)—

(a) in subsection (2), after paragraph (ba) insert—

“(bb) where the solicitor has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;”;

(b) after subsection (7B) (as inserted by paragraph 1(19)(b) of schedule 5 to this Act), insert—

“(7C) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bb) of subsection (2) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate.

(7D) A statutory instrument containing an order under subsection (7C) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”;

(c) after subsection (8), insert—

“(9) In subsection (2)(bb), “*complainer*” has the same meaning as in section 42ZA.”.

(2) In section 55 of the 1980 Act (powers of Court)—

(a) in subsection (1)—

(i) after paragraph (bb), insert—

“(bc) where the Court considers that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the misconduct; or”;

(ii) in paragraph (c), after “solicitor” insert “an amount not exceeding £10,000”;

(b) after subsection (4) insert—

“(5) The Scottish Ministers may by order made by statutory instrument—

(a) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bc) of subsection (1) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate;

(b) amend paragraph (c) of subsection (1) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money.

(6) A statutory instrument containing an order under—

(a) subsection (5)(a) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament;

(b) subsection (5)(b) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(7) In this section, “*complainer*” has the same meaning as in section 42ZA.”.

(3) In section 20 of the 1990 Act (professional misconduct, etc.)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) where the Council consider that the complainer has been directly affected by the professional misconduct or, as the case may be, the matter referred to in paragraph (d) of subsection (1), to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Council may specify to the complainer for loss, inconvenience or distress resulting from the misconduct or, as the case may be, the matter;

(cb) subject to subsection (2ZA) below, to impose on the practitioner a fine not exceeding £2,000;”;

(b) after that subsection, insert—

“(2ZA) The Council shall not impose a fine under subsection (2)(cb) above where, in relation to the subject matter of the complaint, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

(2ZB) Any fine imposed under subsection (2)(cb) above shall be

treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.”;

(c) in subsection (2B), after paragraph (a) insert—

“(aa) where the practitioner has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct.”;

(d) after subsection (11F) (as inserted by paragraph 3(4)(k) of schedule 5 to this Act), insert—

“(11G) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (2)(ca) or (2B)(aa) by substituting for the amount for the time being specified in that provision such other amount as they consider appropriate.

(11H) A statutory instrument containing an order under subsection (11G) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

## **57 Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct**

(1) In section 54 of the 1980 Act (appeals from decisions of Tribunal in cases other than unsatisfactory professional conduct)—

(a) after subsection (1), insert—

“(1A) A solicitor or an incorporated practice may, before the expiry of the period of 21 days beginning with the day on which any decision by the Tribunal mentioned in subsection (1B) is intimated to him or, as the case may be, it appeal to the Court against the decision.

(1B) The decision is—

(a) where the Tribunal was satisfied as mentioned in section 53(1)(a), the finding that the solicitor has been guilty of professional misconduct;

(b) where the Tribunal was satisfied as mentioned in section 53(1)(d), the finding that the incorporated practice has failed to comply with any provision of this Act or of any rule made under this Act applicable to the practice;

(c) in any case falling within paragraph (a) or (b), or where the decision was made because of the circumstances mentioned in section 53(1)(b) or (c), any decision under section 53(2) or (5).

(1C) The Council may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53(2) or (5) is intimated to them, appeal to the Court against the decision; but the Council may not appeal to the Court against a decision of the Tribunal under section 53(2)(bb).

(1D) Where the Tribunal has found that a solicitor has been guilty of professional misconduct but has not directed him under section 53(2)(bb) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal’s finding is intimated to him, appeal to the Court against the decision of

the Tribunal not to make a direction under that subsection.

(1E) A complainer to whom the Tribunal has directed a solicitor under section 53(2)(bb) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Court against the amount of the compensation directed to be paid.

(1F) On an appeal under any of subsections (1A) to (1E), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.

(1G) A decision of the Court under subsection (1A), (1B), (1C), (1D), (1E) or (1F) shall be final.”;

(b) in subsection (2), after paragraph (b) insert

(c) the Tribunal has exercised the power conferred by section 53(6B) to direct that its order shall take effect on the day on which it is intimated to the solicitor, firm of solicitors or incorporated practice concerned, the solicitor, firm of solicitors or incorporated practice may, before the expiry of the period of 21 days beginning with that day, apply to the court for an order varying or quashing the direction in so far as it relates to the day on which the order takes effect”;

(c) after that subsection, insert—

“(2A) In subsections (1D) and (1E), “*complainer*” has the same meaning as in section 42ZA.

(2B) Subsection (1) does not apply to any element of a decision of the Tribunal to which subsections (1A) to (1G) and paragraph (c) of subsection (2) apply.

(2C) Subsections (1A) to (1G), and paragraph (c) of subsection (2), apply to any element of a decision of the Tribunal which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.

(2) In section 20 of the 1990 Act (professional misconduct etc. by conveyancing or executry practitioners)—

(a) after subsection (8), insert—

“(8A) Where the Council are satisfied that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner, the practitioner may—

(a) before the expiry of the period of 21 days beginning with the day on which the finding by the Council to that effect is intimated to him, apply to the Council for a review by them of the finding;

(b) before the expiry of the period of 21 days beginning with the day on which the outcome of the review is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash or confirm the decision.”;

(b) after subsection (11), insert—

“(11ZA) Where the Council find that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner but do not direct him under subsection (2)(ca) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Council’s finding is intimated to him, apply to the Council for a review by them of their decision not to direct the practitioner under

subsection (2)(ca) to pay compensation.

(11ZB) A complainer to whom the Council have directed a practitioner under subsection (2)(ca) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, apply to the Council for a review by them of the direction.

(11ZC) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of the review under subsection (11ZA) or (11ZB) is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash, confirm or vary the decision.”;

(c) in subsection (11A)—

(i) in paragraph (a), after “subsection” insert “(8A)(b) or”;

(ii) after that paragraph, insert—

“(aa) a finding by the Tribunal that a practitioner is guilty of professional misconduct or that the circumstances mentioned in subsection (1)(d) apply as respects the practitioner; or”;

(iii) for the words “or, as the case may be,” substitute “the finding referred to in paragraph (aa) or, as the case may be, the decision”;

(d) after that subsection, insert—

“(11B) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of any appeal under subsection (11ZC) is intimated to him, appeal to the court against the Tribunal’s decision in the appeal.

(11C) Where after holding an inquiry into a complaint against a



practitioner, the Tribunal find that he has been guilty of professional misconduct or that the circumstances referred to in subsection (2A)(b) apply as respects him, but do not direct the practitioner under subsection (2B)(aa) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's finding is intimated to him, appeal to the court against the decision of the Tribunal not to make a direction under that subsection.

(11D) A complainer to whom the Tribunal have directed a practitioner under subsection (2B)(aa) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the court against the amount of the compensation directed to be paid.

(11E) In an appeal under subsection (11C) or (11D), the court may make such order in the matter as it thinks fit.”.

## **PART 2A – SPECIAL PROVISION FOR LICENSED PROVIDERS**

### **57A Complaints about licensed providers**

(1) Parts 1 and 2 apply in relation to complaints made about licensed legal services providers as they apply in relation to complaints made about practitioners.

(2) Subsection (1) is subject to—

(a) subsections (3) and (4), and

(b) such further modification to the operation of Parts 1 and 2 as the Scottish Ministers may by regulations make for the purposes of—

(i) subsection (1),

(ii) section 57B(4) and (5).

(3) In relation to a services complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.

(4) A conduct complaint may not be made about a licensed provider, but—

(a) such a complaint may be made about a practitioner within such a provider,

(b) the provisions relating to such a complaint remain (subject to such modification as to those provisions as is made under subsection (2)(b)) applicable for the purposes of section 57B(4) and (5).

(5) Where an approved regulator receives (from a person other than the Commission) a complaint about the conduct of, or any services provided by, a practitioner within one of its licensed providers, the approved regulator must without delay send to the Commission the complaint and any material that accompanies it.

### **57B Regulatory complaints**

(1) There is an additional type of complaint which applies only in relation to licensed providers (a “regulatory complaint”).

(2) A regulatory complaint is where any person suggests that a licensed provider is failing (or has failed) to—

(a) have regard to the regulatory objectives,

(b) adhere to the professional principles,

(c) comply with—

(i) its approved regulator’s regulatory scheme,

(ii) the terms and conditions of its licence.

(3) In relation to a regulatory complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.

(4) The procedure in respect of a regulatory complaint is (by virtue of section 57A(4)(b)) the same as it would be for a conduct complaint about a licensed provider, subject to such modification as to that procedure as is made under section 57A(2)(b).

(5) The Commission and the approved regulator have (by virtue of section 57A(4)(b)) the same functions in relation to a regulatory complaint as they would have in relation to a conduct complaint about a licensed provider, subject to such modification as to those functions as is made under section 57A(2)(b).

### **57C Levy, advice and guidance**

(1) A licensed provider must pay to the Commission—

- (a) the annual general levy, and
- (b) the complaints levy (if arising),

in accordance with Part 1 (and in addition to any levy payable under that Part by a solicitor or other person within the licensed provider).

(2) Section 29 applies for the purposes of subsection (1) as it applies for the purposes of sections 27(1) and 28(1).

(3) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) and (2)—

- (a) an approved regulator is to be regarded as a relevant professional organisation whose members are its licensed providers,
- (b) a licensed provider is to be regarded—

(i) in connection with the annual general levy, as an individual person falling within the relevant category,

(ii) in connection with the complaints levy, as an individual practitioner of the relevant type.

(4) But the amount of the annual general levy for a licensed provider may be—

(a) different from the amount to be paid by individuals,

(b) of different amounts (including nil) in different circumstances.

(5) The Commission—

(a) must (so far as practicable) provide advice to any person who requests it as respects the process of making a regulatory complaint to the Commission,

(b) may issue guidance under section 40 to approved regulators and licensed providers as respects how licensed providers are to deal with regulatory complaints.

## **57D Recovery of levy**

(1) An approved regulator must—

(a) secure the collection by it, from its licensed providers, of the annual general levy due by them, and

(b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.

(2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.

(3) Subsection (4) of section 27 applies in relation to any sum due under section 57C(1)(a)

(including interest) as it applies in relation to any sum due under subsection (1) of section 27.

(4) Subsection (3) of section 28 applies in relation to any sum due under section 57C(1)(b) (including interest) as it applies in relation to any sum due under subsection (1) of section 28.

(5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—

(a) the approved regulator is to be regarded as the relevant professional organisation,

(b) each of its licensed providers is to be regarded—

(i) in relation to section 27(4), as an individual person falling within the relevant category,

(ii) in relation to section 28(3), as an individual practitioner of the relevant type.

(6) Section 57C(1) is subject to subsection (1).

### **57E Handling complaints**

(1) Parts 1 and 2 apply in relation to any complaint made about how an approved regulator has dealt with a regulatory complaint as they apply in relation to a handling complaint (relating to a conduct complaint) made about a relevant professional organisation.

(2) Subsection (1) is subject to such modification to the operation of those Parts as the Scottish Ministers may by regulations make for the purposes of that subsection.

### **57F Effectiveness of compensation fund**

(1) Section 39 also applies in relation to a compensation fund of its own that is maintained by an approved regulator in furtherance of section 24(2) of the Legal Services (Scotland) Act 2010.

(2) For the application of section 39 by virtue of subsection (1)—

- (a) any such compensation fund is to be regarded as falling within subsection (1)(c) of that section,
- (b) the approved regulator is to be regarded as the relevant professional organisation.

## 57G Interpretation of Part 2A

For the purposes of this Part—

- (a) “*approved regulator*”, “*licensed legal services provider*” (or “*licensed provider*”), “~~professional principles~~”, “~~regulatory objectives~~”, “*regulatory scheme*”, are to be construed in accordance with Part 2 of the Legal Services (Scotland) Act 2010.
- (b) “*professional principles*” means the principles described in section 4(1) of the 2023 Act,
- (c) “*regulatory objectives*” are the objectives described in section 2 of the 2023 Act (construed in accordance with section 3 of that Act).

## ~~PART 2B — SPECIAL PROVISION FOR CONFIRMATION AGENTS AND WILL WRITERS~~

### ~~57H Complaints about agents and writers~~

- ~~(1) Parts 1 and 2 apply in relation to complaints made about confirmation agents and will writers as they apply in relation to complaints made about practitioners.~~
- ~~(2) Subsection (1) is subject to—~~
  - ~~(a) subsection (3), and~~
  - ~~(b) such further modification to the operation of Parts 1 and 2 as the Scottish Ministers may~~

~~by regulations make for the purposes of subsection (1).~~

~~(3) In relation to a services or conduct complaint about a confirmation agent or will writer, the relevant approving body is to be regarded as the relevant professional organisation.~~

### **57I Handling complaints**

~~(1) Parts 1 and 2 apply in relation to any complaint made about how an approving body has dealt with a conduct complaint as they apply in relation to a handling complaint (relating to a conduct complaint) made about a relevant professional organisation.~~

~~(2) Subsection (1) is subject to such modification to the operation of those Parts as the Scottish Ministers may by regulations make for the purposes of that subsection.~~

### **57J Levy payable**

~~(1) A confirmation agent must pay to the Commission—~~

~~(a) the annual general levy, and~~

~~(b) the complaints levy (if arising);~~

~~in accordance with Part 1.~~

~~(2) A will writer must pay to the Commission—~~

~~(a) the annual general levy, and~~

~~(b) the complaints levy (if arising);~~

~~in accordance with Part 1.~~

~~(3) Section 29 applies for the purposes of subsections (1) and (2) as it applies for the purposes~~

~~of sections 27(1) and 28(1).~~

~~(4) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) to (3)—~~

~~(a) an approving body is to be regarded as a relevant professional organisation whose members are its confirmation agents or (as the case may be) will writers;~~

~~(b) a confirmation agent or (as the case may be) will writer is to be regarded—~~

~~(i) in connection with the annual general levy, as an individual person falling within the relevant category;~~

~~(ii) in connection with the complaints levy, as an individual practitioner of the relevant type.~~

## **57K Recovery of levy**

~~(1) An approving body must—~~

~~(a) secure the collection by it, from its confirmation agents or (as the case may be) will writers, of the annual general levy due by them, and~~

~~(b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.~~

~~(2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.~~

~~(3) Subsection (4) of section 27 applies in relation to any sum due under section 57J(1)(a) and (2)(a) (including interest) as it applies in relation to any sum due under subsection (1) of section 27.~~

~~(4) Subsection (3) of section 28 applies in relation to any sum due under section 57J(1)(b) and (2)(b) (including interest) as it applies in relation to any sum due under subsection (1) of~~



~~section 28.~~

~~(5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—~~

~~(a) the approving body is to be regarded as the relevant professional organisation,~~

~~(b) each of its confirmation agents or (as the case may be) will writers is to be regarded—~~

~~(i) in relation to section 27(4), as an individual person falling within the relevant category,~~

~~(ii) in relation to section 28(3), as an individual practitioner of the relevant type.~~

~~(6) Section 57J(1) and (2) is subject to subsection (1)~~

### **57L Interpretation of Part 2B**

~~For the purposes of this Part “*approving body*”, “*confirmation agent*”, “*will writer*”, are to be construed in accordance with Part 3 of the Legal Services (Scotland) Act 2010..~~

## **PART 3 – LEGAL PROFESSION: OTHER MATTERS**

### **58 Constitution of Scottish Solicitors’ Discipline Tribunal**

(1) Schedule 4 to the 1980 Act is amended as follows.

(2) For paragraph 1 substitute—

**“1**

The Tribunal shall consist of not more than 28 members.

**1A**

The Tribunal shall consist of equal numbers of—

(a) members (in this Part referred to as “*solicitor members*”) appointed by the Lord President, who are solicitors recommended by the Council as representatives of the solicitors’ profession throughout Scotland; and

(b) members (in this Part referred to as “*non-lawyer members*”) appointed by the Lord President after consultation with the Scottish Ministers, who are not—

(i) solicitors;

(ii) advocates;

(iii) conveyancing practitioners or executry practitioners, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) (“the 1990 Act”);

(iv) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.

## **1B**

The validity of any proceedings of the Tribunal is not affected by a vacancy in membership of the Tribunal nor by any defect in the appointment of a member.

## **1C**

The Scottish Ministers may by order made by statutory instrument amend paragraph 1 so as to vary the maximum number of members of the Tribunal.

## **1D**

A statutory instrument containing an order made under paragraph 1C is subject to annulment in pursuance of a resolution of the Scottish

Parliament.”.

(3) In paragraph 2(a), for “lay” substitute “non-lawyer”.

(4) In paragraph 3, for “lay” substitute “non-lawyer”.

(5) In paragraph 5—

(a) in sub-paragraph (b), for “1 lay member is” substitute “2 solicitor members are”;

(b) for sub-paragraph (c) substitute—

“(c) at least 2 non-lawyer members are present.”;

(c) sub-paragraph (d) is repealed.

(6) In paragraph 6, for “lay” substitute “non-lawyer”.

### **59 Scottish Solicitors Guarantee Fund: borrowing limit**

In paragraph 2(2) of Schedule 3 (Scottish Solicitors Guarantee Fund) to the 1980 Act, for “£20,000” substitute “£1,250,000”.

### **60 Safeguarding interests of clients**

(1) The 1980 Act is amended as follows.

(2) In section 45 (safeguarding interests of clients of solicitors struck off or suspended)—

(a) after subsection (4), insert—

“(4A) Where—

(a) a solicitor is restricted from acting as a principal; and

(b) immediately before the restriction the solicitor was a sole solicitor, the right to operate on, or otherwise deal with, any client account in the name of the solicitor or the solicitor's firm shall on the occurrence of those circumstances vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person until such time as the Council have approved acceptable other arrangements in respect of the client account.”;

(b) in subsection (5), after the definition of “material date”, insert—

“*principal*” means a solicitor who is a sole practitioner or is a partner in a firm of two or more solicitors or is a director of an incorporated practice which is a company or a solicitor who is a member of a multi-national practice having its principal place of business in Scotland;”.

## **61 Offence for unqualified persons to prepare certain documents**

In section 32(2) of the 1980 Act (offence for unqualified persons to prepare certain documents), after paragraph (e) add

“; or

(f) to a member of a body which has made a successful application under section 25 of the 1990 Act but only to the extent to which the member is exercising rights acquired by virtue of section 27 of that Act”.

## **62 Notaries public to be practising solicitors**

(1) The 1980 Act is amended as follows.

(2) In section 57(2), after “solicitor” insert “qualified to practise in accordance with section 4”.

(3) In section 58, after subsection (4) insert—

“(5) Where a person who is a solicitor and a notary public no longer has in force a practising certificate, the Council shall forthwith remove the person’s name from the register of notaries public.

(6) If the person mentioned in subsection (5) becomes qualified to practise as a solicitor in accordance with section 4, the Council shall restore the person’s name to the register of notaries public.”.

### **63 Regulation of notaries public**

After section 59 of the 1980 Act, insert—

#### **“59A Rules regarding notaries public**

(1) Subject to subsections (2) and (3), the Council may, if they think fit, make rules for regulating in respect of any matter the admission, enrolment and professional practice of notaries public.

(2) The Council shall, before making any rules under this section—

(a) send to each notary public a draft of the rules; and

(b) take into consideration any representations made by any notary public on the draft.

(3) Rules made under this section shall not have effect unless the Lord President, after considering any representations the Lord President thinks relevant, has approved the rules so made.

(4) If a notary public fails to comply with any rule made under this section

that failure may be treated as professional misconduct or unsatisfactory professional conduct on the part of the solicitor who is the notary public.”.

## PART 5 GENERAL

### 78 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.

(1A) The Scottish Ministers may [ by order]<sup>2</sup> make such further provision as, having regard to the effect of the Legal Services Act 2007 so far as concerning the subject matter of Parts 1 and 2 of this Act (and applying in Scotland), they consider necessary or expedient in connection with this Act or any related provisions of the 1980 Act.

(2) An order under this section may—

- (a) make different provision for different purposes;
- (b) modify any enactment, instrument or document.

### 79 Regulations or orders

(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—

- (a) must be exercised by statutory instrument;
- (b) may be exercised so as to make different provision for different purposes.

(2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 26(1) or 82(2)) is, subject to subsection (3), subject to annulment in

pursuance of a resolution of the Parliament.

(3) A statutory instrument containing—

(a) an order under section 10(7) or 24(8);

(b) regulations under section 41(1);

(c) an order under—

(i) [section 78(1) or (1A)]<sup>1</sup> containing provisions which add to, replace or omit any part of the text of an Act;

(ii) paragraph 2(7) of schedule 1,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

## **80 Interpretation**

In this Act—

*“the 1980 Act”* means the Solicitors (Scotland) Act 1980 (c.46);

*“the 1986 Act”* means the Legal Aid (Scotland) Act 1986 (c.47);

*“the 1990 Act”* means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40).

*“the 2023 Act”* means the Regulation of Legal Services (Scotland) Act 2023.

## **81 Minor and consequential modifications**

Schedule 5 makes—

- (a) minor modifications;
- (b) modifications consequential on the provisions of this Act.

## 82 Short title and commencement

- (1) This Act may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007.
- (2) The provisions of this Act, except this section and sections 46, 79 and 80 come into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be appointed under subsection (2) for different purposes.

## Schedule 1 THE SCOTTISH LEGAL COMPLAINTS SERVICES COMMISSION

### *Status*

- 1 (1) The Commission is a body corporate.
- (2) The Commission is not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

### *Membership of the Commission*

- 2 (1) The Commission is to consist of the following members—
  - (a) a person to chair the Commission (“the chairing member”); and
  - (b) 8 other members.
- (2) Members are appointed by the Scottish Ministers, having consulted the Lord President of



the Court of Session (“the Lord President”).

(3) The chairing member and ~~5~~ 4 other members of the Commission must be members (in this schedule referred to as “*non-lawyer members*”) who are not within any of the categories mentioned in sub-paragraph (6).

(4) There must be ~~3~~ 4 members of the Commission (in this schedule referred to as “*lawyer members*”) who are within any of the categories mentioned in sub-paragraph (6).

(5) Of the lawyer members 3 must have practised within any, or any combination, of the categories mentioned in sub-paragraph (6) for at least 10 years.

(6) The categories are—

(a) solicitors;

(b) advocates;

(c) conveyancing practitioners or executry practitioners;

~~(d) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act~~

(d) persons exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act).

(7) The Scottish Ministers may, subject to sub-paragraphs (8) and (9), by order amend—

(a) sub-paragraph (1)(b) to alter the number of other members referred to there;

(b) sub-paragraph (3) to alter the number of other members referred to there;

(c) sub-paragraph (4) to alter the number of members referred to there;

(d) sub-paragraph (5) to alter the number of lawyer members referred to there.

(8) The number of non-lawyer members must be greater than the number of lawyer members.

(9) The number of—

- (a) non-lawyer members must be no fewer than 4 and no greater than 8;
- (b) lawyer members must be no fewer than 3 and no greater than 7.

*Terms of appointment etc.*

**3** (1) Subject to sub-paragraph (2), each member is to be appointed for a period of ~~5~~ 8 years.

(2) Appointments that constitute the Commission for the first time are to be in accordance with sub-paragraph (3).

(3) Each member is to be appointed for a period of not less than 4 years and not exceeding 6 years.

(4) A member—

- (a) may by giving notice in writing to the Scottish Ministers resign office as a member of the Commission;
- (b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.

(5) A person is, on ceasing to be a member, eligible for reappointment for a single further period; but not before a period of ~~3~~ 4 years has elapsed.

**4** In appointing members, the Scottish Ministers are to have regard to the desirability of including—

- (a) persons who have experience of, and have shown capacity in—
  - (i) consumer affairs or complaints handling;

- (ii) the provision of advice to members of the public on or in relation to such matters;
- (b) persons who have experience of, and shown capacity in, the practice and provision of legal education and training;
- (c) persons who have experience of, and shown capacity in—
  - (i) civil or criminal proceedings;
  - (ii) court procedures and practice generally;
  - (iii) the practice and provision of other legal services;
  - (iv) the monitoring of legal services;
- (d) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Commission's functions.

#### *Removal of members*

**5 (1)** Subject to sub-paragraph (2), the chairing member may, by written notice, remove a member from office if the chairing member is satisfied as regards any of the following matters—

- (a) that the member becomes insolvent;
- (b) that the member—
  - (i) has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission;
  - (ii) has been convicted of a criminal offence;
  - (iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

(2) The chairing member may not remove a member from office without the agreement of the Lord President of the Court of Session.

(3) The Lord President may, by written notice, remove the chairing member from office if the Lord President is satisfied as regards any of the matters mentioned in sub-paragraph (1)(a) or (b).

(4) For the purpose of sub-paragraph (1)(a) a member becomes insolvent on—

- (a) the approval of a voluntary arrangement proposed by the member;
- (b) being adjudged bankrupt;
- (c) the member's estate being sequestrated;
- (d) entering into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;
- (e) granting a trust deed for creditors.

#### *Disqualification from membership*

**6** (1) A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—

- (a) a member of the House of Commons;
- (b) a member of the Scottish Parliament;
- (c) a member of the European Parliament.

(2) A person who has held any of the offices set out in sub-paragraph (1)(a) to (c) is also disqualified from appointment as a member of the Commission for a period of one year starting from the day on which the person last held any of those offices.

*Remuneration, allowances and pensions for members*

**7** (1) The Commission is to pay to its members such remuneration as the Scottish Ministers may in each case determine.

(2) The Commission is to pay to its members such allowances as the Scottish Ministers may in each case determine.

(3) The Commission may, with the approval of the Scottish Ministers—

(a) pay or make arrangements for the payment;

(b) make payments towards the provision;

(c) provide and maintain schemes (whether contributory or not) for the payment,

of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a member of the Commission, as the Commission may determine.

(4) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

*Chief executive and other employees*

**8** (1) The Commission is to employ a chief executive.

(2) The chief executive is, with the approval of the Scottish Ministers, to be appointed by the Commission on such terms and conditions as the Commission may, with such approval, determine.

(3) The Commission may (subject to any directions given under sub-paragraph (4)) appoint such other employees on such terms and conditions as the Commission may determine.

(4) The Scottish Ministers may give directions to the Commission as regards the appointment of employees under sub-paragraph (3) (including the number of appointments) and as regards terms and conditions of their employment.

(5) The Commission must comply with directions given to it under sub-paragraph (4).

(6) The Commission may, with the approval of the Scottish Ministers—

(a) pay or make arrangements for the payment;

(b) make payments towards the provision;

(c) provide and maintain schemes (whether contributory or not) for the payment,

of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as the Commission may determine.

(7) The reference in sub-paragraph (6) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

#### *Accountable officer*

**9** (1) The chief executive is the accountable officer for the purposes of this paragraph.

(2) The functions of the accountable officer are—

(a) signing the accounts of the expenditure and receipts of the Commission;

(b) ensuring the propriety and regularity of the finances of the Commission;

(c) ensuring that the resources of the Commission are used economically, efficiently and effectively;

(d) the duty mentioned in sub-paragraph (3).

(3) The duty is, where the accountable officer is required by the Commission to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—

- (a) obtain written authority from the Commission before taking the action;
- (b) send a copy of the authority as soon as possible to the Auditor General for Scotland.

### *Procedure*

**10** (1) Subject to sub-paragraph (2)—

- (a) any quorum of the Commission as contained in rules made under section 32(1) must consist of a greater number of non-lawyer members than lawyer members;
- (b) the chairing member must, if present, chair meetings of the Commission or any committee of the Commission;
- (c) if the chairing member is not available to be present at a meeting of the Commission or any committee of the Commission, the chairing member is to appoint another non-lawyer member to chair the meeting or committee;
- (d) the chairing member has a casting vote; and any person appointed by that member under sub-sub-paragraph (c) has a casting vote for the purposes of that appointment;
- (e) the validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.

(2) Sub-paragraph (1) does not apply to a **determination review** committee established under paragraph 11(1)(a).

### *Committees*

**11 (1) The Commission—**

(a) must establish one or more **determination review** committees in accordance with rules made under section 32(1) for the purpose of exercising any functions mentioned in paragraph 13(2) which a **determination review** committee is authorised by the Commission to exercise;

(b) may establish other committees for any other purposes relating to its functions.

**(2) Subject to sub-paragraph (3)—**

(a) the Commission is to determine the composition of its committees;

(b) any quorum of a committee as contained in rules made by virtue of section 32 must consist of a greater number of non-lawyer members than lawyer members;

(c) a committee of the Commission is to comply with any directions given to it by the Commission.

**(3) Sub-paragraph (2) does not apply to a **determination review** committee established under subparagraph (1)(a).**

**11A (1) The Commission must establish an independent advisory panel.**

**(2) The functions of the panel are—**

(a) to make recommendations to the Commission for improvements to the Commission's practice and procedures;

(b) to make suggestions to the Commission of topics for research connected to consumers;

(c) to express views on such matters relevant to the Commission's functions as the **panel considers appropriate ~~Commission directs~~**.



(d) to make recommendations to the Commission in relation to any of the Commission's functions as the panel considers appropriate,

(e) to make recommendations to relevant professional organisations relating to any of their functions conferred under or by virtue of the 2023 Act,

(f) such other functions as may be conferred on the panel by or under an enactment.

(3) The panel must consist of—

(a) at least two members who represent an organisation which appears to the Commission to promote the interests of consumers;

(b) at least one member who represents an organisation which appears to the Commission to promote equality;

(c) such other members as the Commission considers appropriate.

#### *General powers*

**12** (1) The Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, or appears to it to be conducive to, the exercise of the Commission's functions.

(2) In particular the Commission may—

(a) enter into contracts;

(b) with the consent of the Scottish Ministers, borrow money;

(c) with the consent of the Scottish Ministers, acquire and dispose of land;

(d) obtain advice or assistance from any person who, in the Commission's opinion, is qualified to give it.

(3) The Commission may pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the Commission may, with the approval of the Scottish Ministers, determine.

### *Delegation of functions*

**13** (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—

- (a) the chief executive;
- (b) any of its committees;
- (c) any of its members;
- (d) any of its other members of staff,

to exercise such of its functions (to such extent) as it may determine.

(2) The Commission may authorise—

~~(a) a decision under section 2(4)(a) that a complaint is frivolous, vexatious or totally without merit to be [taken]<sup>3</sup> only by any of its committees or by one of the Commission's members;~~

(b) the function of deciding under section 3(1) whether—

(i) any element of a complaint is capable of being dealt with under a specified regulatory scheme;

~~(ii) the extent (if any) to which the Commission is able to take the preliminary steps referred to in section 2(4) in relation to the complaint and to deal with it under Part 1,~~

to be exercised only by one of the Commission's members;

(c) the function of deciding whether any element of a complaint is about the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime

or investigation of deaths to be exercised only by one of the Commission's members;

~~(d) the following functions to be exercised only by a determination committee—~~

~~(i) the making of a determination under section 9(1);~~

~~(ii) the making of a determination or direction under section 10(2);~~

~~(iii) the making of any decision or the publication of a report under section 13;~~

~~(iv) the making of a decision under section 23(2);~~

~~(v) the making of a direction under section 24(6).~~

(d) the function of considering an application for review of a decision of the Commission under section 20A(1) to be exercised only by the review committee, but a review in respect of any of the following decisions may be taken by a single member of the review committee—

(i) a decision by the Commission that a complaint referred to in section 2(1) is or is not an eligible complaint in accordance with any provision in rules made under section 32(1),

(ii) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a conduct complaint) to the relevant professional organisation under section 6(2),

(iii) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a regulatory complaint) to the relevant professional organisation under section 7A(2),

(iv) a decision to reinstate the investigation of a services complaint in accordance with section 9(1A)(b).

(e) the function of making a decision under section 23(2) to be exercised only by any of its committees,

(f) the function of making a direction under section 24(2) to be exercised only by any of its

**committees.**

(3) The Commission may not authorise the exercise of any of the following functions under sub-paragraph (1)—

- (a) the approval of annual reports and accounts;
- (b) making of rules under section 32(1);
- (c) determining the amount of the annual general levy and the complaints levy under section 29(1);
- (d) the approval of any budget or other financial plan.

(4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.

*Location of office*

**14** (1) Subject to sub-paragraph (2), the Commission's determination of the location of the Commission's office premises is subject to the approval of the Scottish Ministers.

(2) The Scottish Ministers may direct the Commission as to the location of the Commission's office premises; and the Commission must comply with any such direction.

*Accounts*

**15** (1) The Commission must—

- (a) keep proper accounts and accounting records;
- (b) prepare in respect of each financial year a statement of accounts; and

(c) send the statement of accounts to the Scottish Ministers,  
in accordance with such directions as the Scottish Ministers may give.

(2) The Scottish Ministers must as soon as practicable—

(a) send the statement of accounts to the Auditor General for Scotland for auditing;

(b) lay the audited statement before the Parliament.

(3) If requested by any person, the Commission is to make available at any reasonable time, without charge, in printed or electronic form, their audited accounts, so that they may be inspected by that person.

### *Reports*

**16** (1) As soon as practicable after the end of each financial year, the Commission must prepare a report on—

(a) the discharge of the Commission's functions during that year; and

(b) such action the Commission proposes to take in the following year in pursuance of its functions.

(1A) The report must, in particular—

(a) explain how the Commission has discharged its functions during the year in a manner which, in accordance with section 3(1) of the 2023 Act—

(i) is compatible with the regulatory objectives (to be construed in accordance with sections 2 and 3 of the 2023 Act), and

(ii) it considers is most appropriate to meet those objectives,

(b) provide a list of any directions given during the year to—

- (i) a relevant professional organisation under 24(2),
  - (ii) a relevant professional organisation under section 40A(6),
  - (iii) a practitioner under section 40B(3),
- (c) include—
- (i) information about compensation awarded during the year to complainers following services complaints, and
  - (ii) so far as it is known to the Commission, information about whether compensation awarded during the year has been paid.

(2) The Commission must—

- (a) send a copy of the report to the Scottish Ministers; and
- (b) publish the report.

(3) In preparing and publishing the report the Commission must do so in accordance with such directions as the Scottish Ministers may give.

(4) The Scottish Ministers must as soon as practicable lay a copy of the report before the Parliament.

(5) The Commission may publish such other reports on matters relevant to the functions of the Commission as it considers appropriate.

## **Schedule 2 FURTHER POWERS OF COMMISSION UNDER SECTION 17 OR 37**

**1** Where the Commission—

(a) gives notice under subsection (1) of section 17 to any person having possession or control of any documents mentioned in subsection (3) of that section;

(b) gives notice under section 17(4) to any person having possession or control of any documents mentioned in subsection (6) of that section;

(c) requires any person under section 37(1) or (3) to provide it with information or documents referred to in that section,

and the person refuses or fails to produce or deliver any of the documents or the information within the time specified in the notice or requirement or to cause them to be so produced or delivered, the Commission may apply to the court for an order requiring the person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the Commission within such time as the court may order.

**2** Where the Commission takes possession of any such documents or information which have or has been produced or delivered to it, it must—

(a) in the case mentioned in paragraph 1(a) or (c), without delay serve on the practitioner against whom the complaint is made, and any other person to whom the notice was given or requirement made;

(b) in the case mentioned in paragraph 1(b), without delay serve on the complainer,

a notice giving particulars and the date on which it took possession.

**3** Before the expiry of the period of 14 days after service of a notice under paragraph 2 the person on whom the notice has been served may apply to the court for an order directing the Commission to return such documents or information to the person from whom they were received by the Commission or to such other person as the applicant may request; and on the hearing of any such application the court may make the order applied for or such other order as

it thinks fit.

4 If no application is made to the court under paragraph 3, or if the court on any such application directs that the documents or information in question remain in the custody or control of the Commission, the Commission may make enquiries to ascertain the person to whom they belong and may deal with the documents or information in accordance with the directions of the person.

### **Schedule 3 RULES AS TO COMMISSION'S PRACTICE AND PROCEDURE**

~~1 The rules as to the Commission's practice and procedure made under section 32(1) must include provision—~~

~~(a) regulating the making to the Commission of complaints under Part 1, including—~~

~~(i) when a complaint is to be regarded as made for the purposes of the Part;~~

~~(ii) the eligibility of persons to make such complaints on behalf of other persons (whether living or not);~~

~~(b) requiring the Commission not to—~~

~~(i) investigate a services complaint by virtue of section 9;~~

~~(ii) remit a conduct complaint to a relevant professional body under [section 6(2)(a) or 15(5)(a)]<sup>1</sup>;~~

~~(iii) investigate a handling complaint by virtue of section 23,~~

~~unless the complainer has, for the purposes of Parts 1 and 2 of this Act, waived any right of confidentiality in relation to the matters to which the complaint relates;~~

~~(c) regulating the handling by it of complaints under Part 1;~~



~~(ca) specifying the grounds on which the Commission may discontinue the investigation of a complaint under section 9(1A)(a) or 23(2)(b) and reinstate a complaint under sections 9(1A)(b) or 23(2)(c);~~

~~(cb) as to the circumstances in which an investigation discontinued under section 9(1A)(a) or 23(2)(b) may cease to be able to be reinstated under sections 9(1A)(b) or 23(2)(c);~~

~~(d) regulating the proposal by the Commission under section 9(2) of a settlement of a complaint and how an accepted settlement is to be constituted;~~

~~(e) requiring the Commission—~~

~~(i) where it considers it appropriate, to hold a hearing in relation to a complaint being dealt with by it under Part 1;~~

~~(ii) to decide whether such a hearing should be in public or private;~~

~~(f) as to—~~

~~(i) the evidence which may be required or admitted;~~

~~(ii) the extent to which it may be oral or written;~~

~~(iii) the consequences of a person's failure to produce any information or document which the person has been required to produce;~~

~~(g) as to when reasons are to be given (in circumstances where they are not required by this Act to be given)—~~

~~(i) for the Commission's determinations, directions, decisions or recommendations under Part 1;~~

~~(ii) in respect of what matters relating to the determinations, directions, decisions or recommendations;~~

~~(h) as to the membership of a determination committee, including in particular provision~~

requiring—

- ~~(i) that any such committee has at least 3 members, of which the majority are non-lawyer members of the Commission;~~
- ~~(ii) that any such committee is chaired by a lawyer member of the Commission;~~
- ~~(iii) where the Commission has under section 9(2) proposed a settlement as respects a complaint and the settlement has not been accepted as mentioned in section 9(4), that the members of the committee determining the complaint under section 9(1) or making a determination or direction under section 10(2), by virtue of paragraph 13(2) of schedule 1, must not have been involved in any aspect of the investigation of the complaint (including deciding under section 2(4)(a)[that]<sup>3</sup> the complaint was frivolous, vexatious or totally without merit) or the formulation or making by the Commission of the proposed settlement;~~
- ~~(i) requiring, where the Commission itself (and not one of its determination committees) determines a complaint under section 9(1) or makes a determination or direction under section 10(2) in relation to a complaint, that any member of the Commission involved in doing so must not have been involved in any aspect of the investigation of the complaint (including any matter referred to in paragraph 13(2)(a) to (c) of schedule 1) or the formulation or making by the Commission under section 9(2) of a proposed settlement as respects the complaint;~~
- ~~(j) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) on any amount of the annual general levy due to be paid to the Commission by a relevant professional organisation under section 27(2)(b) from the date the amount is due under the rules until it is paid;~~
- ~~(k) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) on any amount of the complaints levy due to the Commission from the date the amount is due under the rules until it is paid;~~
- ~~(l) subject to schedule 1, regulating its own meetings (including any quorum) and that of its committees.~~

1 The rules as to the Commission's practice and procedure made under section 32(1) must include provision about—

(a) the criteria to be met for a complaint to be considered eligible (including the time limit within which a complaint must be made and circumstances in which time limits may be extended),

(b) how a complaint is to be assessed with reference to eligibility criteria,

(c) the requirement for the complainer, for the purposes of Parts 1 and 2 of this Act, to waive any right of confidentiality in relation to the matters to which the complaint relates and, without which, the Commission is not to—

(i) remit a conduct complaint to a relevant professional organisation under section 6(2),

(ii) remit a regulatory complaint to a relevant professional organisation under section 7A(2),

(iii) investigate a services complaint by virtue of section 9,

(iv) investigate a handling complaint by virtue of section 23,

(d) matters to be considered by the Commission in determining whether or not legal services provided by a person mentioned in section 2(1)(b)(ii) are merely incidental to the provision of other services (in determining whether a services complaint against such a person is an eligible complaint).

(e) how a complaint is to be categorised as a services complaint, a conduct complaint or a regulatory complaint (or any combination of the same and to any extent),

(f) the circumstances in which the Commission may decide—

(i) to discontinue the investigation of a services complaint under section 9(1A)(a),

(ii) to discontinue the investigation of a handling complaint under section 23(2)(b),

(g) the circumstances in which the Commission may decide—

- (i) to reinstate the investigation of a discontinued services complaint under section 9(1A)(b),
  - (ii) to reinstate the investigation of a discontinued handling complaint under section 23(2)(c),
- (h) the manner in which a services complaint is to be investigated by the Commission (and by whom),
- (i) hearings to be held by the Commission in relation to a services complaint or a handling complaint being dealt with by it under Part 1 which must require the Commission—
- (i) to hold a hearing in relation to such a complaint where it considers it appropriate, and
  - (ii) require the Commission to decide whether such a hearing should be public or private,
- (j) evidence, including—
- (i) the evidence that may be required or admitted,
  - (ii) the extent to which it may be oral or written,
  - (iii) the consequences of a person's failure to produce any information or document which the person has been required to produce,
- (k) the manner in which a services complaint is to be determined by the Commission (and by whom),
- (l) the manner in which a handling complaint is to be investigated and determined by the Commission,
- (m) the timing and the manner in which the Commission is to notify, in relation to a complaint, the complainer, practitioner and the practitioner's employer (if any) of its decisions including a decision—
- (i) that a complaint referred to in section 2(1) is not an eligible complaint,

- (ii) not to investigate a handling complaint,
  - (iii) that a complaint referred to in section 2(1) is eligible and whether it is being (or is to be) investigated by the Commission, the relevant professional organisation or both,
  - (iv) that the investigation of a complaint referred to in section 2(1), or a handling complaint, has been (or is to be) discontinued or reinstated,
  - (v) whether or not a services complaint has been upheld by the Commission under section 9(1) and, if it has, any determination, direction or report by the Commission under section 10(2),
  - (vi) relating to an application for review under section 20A,
- (n) the membership of a review committee, including in particular provision requiring—
- (i) that such a committee has at least 3 members, of which the majority are non-lawyer members of the Commission,
  - (ii) that such a committee is chaired by a lawyer member of the Commission,
- (o) the procedure to be followed in connection with reviews under section 20A including—
- (i) grounds on which an application for review will be considered eligible, including whether it has a reasonable prospect of success,
  - (ii) notice to be given of applications and decisions,
  - (iii) the manner in which reviews are to be conducted,
- (p) the determination of the annual general levy, and the arrangements for payment of the levy, including—
- (i) the matters to be taken account of by the Commission in determining the amount of the annual general levy relating to practitioners who are not individuals which may be different in different circumstances such as the size and income of the practitioner,

(ii) arrangements to be made with a view to ensuring that the annual general levy is not payable more than once by or in relation to a individual practitioner within an authorised legal business,

(q) the circumstances in which the complaints levy is payable under section 28(1) by a practitioner against whom a services complaint is made,

(r) the circumstances in which the complaints contribution is payable under section 28B(1) by a person against whom a services complaint is made,

(s) the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) on any amount of the annual general levy due to be paid to the Commission by a relevant professional organisation under section 27(2)(b) from the date the amount is due under the rules until it is paid,

(t) the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) on any amount of the complaints levy due to the Commission from the date the amount is due under the rules until it is paid.

**1A** Rules under paragraph 1(o)(iii) must in particular provide that any member of the review committee considering a complaint must not have been involved in—

(a) any aspect of the investigation of the complaint (including considering the eligibility of the complaint),

(b) the steps to be taken by the Commission where, in the course of considering a services complaint, it considers it to be reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint,

(c) determining the complaint under section 9(1),

(d) making a determination under section 10(2) in relation the complaint.

~~The rules as to the Commission's practice and procedure made under section 32(1) may in particular include provision—~~

~~(a) fixing time limits for the making of complaints against practitioners or relevant professional organisations or the stages of its investigation under Part 1;~~

~~(b) as to—~~

~~(i) extension of any time limit fixed by it under the rules;~~

~~(ii) the circumstances in which such extension may be made;~~

~~(c) as to the circumstances in which the Commission is not prevented by section 4(2) from taking the steps and further action referred to in that section in relation to a complaint which is made prematurely (within the meaning of section 4(4));~~

~~(d) as to the circumstances in which the Commission may rely on—~~

~~(i) with the agreement of the body concerned, findings in fact of a relevant professional organisation, the Scottish Solicitors' Discipline Tribunal or such other body as the Scottish Ministers may by order specify which has disciplinary functions;~~

~~(ii) previous findings in fact of the Commission;~~

~~(e) securing that a procedural defect in relation to—~~

~~(i) the making of;~~

~~(ii) the Commission dealing with,~~

~~a complaint under Part 1 is not to have an effect under the Part where the Commission considers that appropriate in the interests of fairness;~~

~~(f) as to the collection of the amount of the annual general levy to be paid to it by the relevant professional organisations and of any complaints levy due to it by practitioners;~~

~~(g) as to the recovery by it from the relevant professional organisations of the annual general levy due to be paid to it by them and from practitioners of any complaints levy due by them;~~

~~(h) as to the circumstances in which the Commission may—~~

~~(i) waive a portion of the annual general levy which would otherwise be payable under section 27(1);~~

~~(ii) refund any portion of an amount paid under that section;~~

~~(i) as to the circumstances in which the Commission may waive the requirement under section 28(1) to pay the complaints levy in any case;~~

~~(j) as to the calculation of the total amount of the annual general levy each relevant professional organisation is due to collect under section 27(2)(a) in respect of each financial year and notification of each such organisation of the amount so calculated by the Commission.~~

**2** The rules as to the Commission's practice and procedure made under section 32(1) may in particular include provision about—

(a) the steps to be taken by the Commission where, in the course of considering a services complaint, it becomes aware of new information which causes it to decide that the complaint is not an eligible complaint,

(b) the steps to be taken by the Commission where, in the course of considering a services complaint, it considers it to be reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint,

(c) the steps to be taken by a relevant professional organisation where, in the course of considering a conduct or regulatory complaint, it considers it to be reasonably likely that the complaint (or any element of it) may instead constitute a services complaint,

(d) the circumstances in which the Commission is not prevented from considering a complaint which would otherwise be considered to have been made prematurely in accordance with the rules.

**3** In this schedule—



“*lawyer member*” has the meaning given by paragraph 2(4) of schedule 1;

“*non-lawyer member*” has the meaning given by paragraph 2(3) of that schedule.

## **Schedule 4 FURTHER POWERS OF RELEVANT PROFESSIONAL ORGANISATIONS UNDER SECTION 48**

**1** Where a relevant professional organisation gives notice—

(a) under section 48(1)(a) to any person having possession or control of any documents mentioned in subsection (3) of that section;

(b) under section 48(1)(b) to any person having possession or control of any documents mentioned in subsection (5) of that section,

and the person refuses or fails to produce or deliver any of the documents within the time specified in the notice or to cause them to be so produced or delivered, the relevant professional organisation may apply to the court for an order requiring the person to produce or deliver the documents or to cause them to be produced or delivered to the person appointed at the place fixed by the relevant professional organisation within such time as the court may order.

**2** Where a relevant professional organisation takes possession of any such documents which have been produced or delivered to it, it must—

(a) in the case mentioned in paragraph 1(a), without delay serve on the practitioner against whom the complaint is made, and any other person to whom the notice was given;

(b) in the case mentioned in paragraph 1(b), without delay serve on the complainer,

a notice giving particulars and the date on which it took possession.

**3** Before the expiry of the period of 14 days after service of a notice under paragraph 2 the

person on whom the notice has been served may apply to the court for an order directing the relevant professional organisation to return such documents to the person from whom they were received by the relevant professional organisation or to such other person as the applicant may request; and on the hearing of any such application the court may make the order applied for or such other order as it thinks fit.

#### **4**

If no application is made to the court under paragraph 3, or if the court on any such application directs that the documents in question remain in the custody or control of the relevant professional organisation, the relevant professional organisation may make enquiries to ascertain the person to whom they belong and may deal with the documents in accordance with the directions of that person.