

CHAPTER 68

APPLICATIONS UNDER THE SOLICITORS (SCOTLAND) ACT 1980

Application and interpretation of this Chapter

68.1.-(1) This Chapter applies to an application or appeal under the Solicitors (Scotland) Act 1980 (a).

(2) In this Chapter-

"the Act of 1980" means the Solicitors (Scotland) Act 1980;

"the Council" means the Council of the Law Society of Scotland;

"the Discipline Tribunal" means the tribunal constituted under section 50 of the Act of 1980.

Applications and appeals under the Act of 1980

68.2.-(1) Except in the case of an application under paragraph 20 of Schedule 4 to the Act of 1980 (which shall be made by letter to the Deputy Principal Clerk), an application or appeal under the Act of 1980 shall be made by petition.

(2) An appeal under any of the following provisions of the Act of 1980 shall specify the date on which the decision appealed against was intimated to the petitioner:-

- (a) section 16(2) (appeal in respect of issue of practising certificate);
- (b) section 39A(8) (b) (appeal against withdrawal of practising certificate);
- (c) section 40(3) (c) (appeal against decision to withdraw practising certificate or to refuse to terminate suspension);
- (d) section 54(1) (d) (appeal against decision of tribunal relating to discipline); and
- (e) paragraph 3 of Schedule 2 (appeal in respect of restoration to roll of solicitors).

(3) An application under paragraph 5(4) of Schedule 3 to the Act of 1980 (application for order for return of documents) shall specify the date on which the notice was served on the petitioner.

(4) An application under section 54(2) of the Act of 1980 (application to vary or quash direction of the tribunal) shall specify the date on which the decision containing the direction or order was intimated to the petitioner.

Applications for admission as notary public

68.3.-(1) An application under section 57(2) of the Act of 1980 (e) (application for admission as notary public) shall be made by either the Council on behalf of named persons seeking appointment as notaries public or the person seeking appointment as a notary public.

(2) The Council shall-

(a) 1980 c.46.

(b) Section 39A of the Act of 1980 was inserted by the Solicitors (Scotland) Act 1988 (c.42), section 4.

(c) Section 40(3) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, paragraph 18.

(d) Section 54(1) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 29.

(e) Section 57(2) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 37.

- (a) nominate authorised representatives to administer the oath of the office of notary public;
- (b) issue all commissions as notary public;
- (c) keep the register of notaries public; and
- (d) on request by a notary public, and on payment of such reasonable fee as the Council may impose, supply him with a duly certified and docquetted protocol book of ninety one folios.

Intimation and service in causes under this Chapter

68.4.-(1) A petition to which this Chapter applies shall be brought before a Division of the Inner House in chambers, and the Division may, without hearing parties and subject to the following paragraphs, make such order for intimation and service as it thinks fit.

(2) In a cause under any of the following provisions of the Act of 1980, the court shall order service of the petition on the Council:-

- (a) section 16(1)(a) (application following refusal of practising certificate to body corporate);
- (b) section 19(8) (appeal in respect of decision of Council in relation to suspension);
- (c) section 39A(8) (appeal against withdrawal of practising certificate);
- (d) section 40(3) (appeal against decision to withdraw practising certificate or to refuse to terminate suspension); and
- (e) paragraph 5(4) of Schedule 3 (application for order for return of documents).

(3) In an appeal under section 54(1) (appeal against decision of tribunal relating to discipline), or in an application under section 54(2) (b) (application to vary or quash direction of the tribunal), of the Act of 1980, the court shall-

- (a) order service on the Discipline Tribunal and the Law Society of Scotland; and
- (b) ordain the Discipline Tribunal to lodge in process within the period for lodging answers-
 - (i) the decision of the Discipline Tribunal in respect of which the appeal or application is made; and
 - (ii) if available, the notes of evidence adduced before the Discipline Tribunal.

(4) In an application under any of the following provisions of the Act of 1980, the court shall order service of the petition on the respondent:-

- (a) section 41 (c) (application for appointment of judicial factor);
- (b) paragraph 5(1) of Schedule 3 (application for order to produce documents); and
- (c) paragraph 12 of Schedule 4 (petition to cite witnesses for recovery of evidence).

(5) In an application under section 55(3) of the Act of 1980 (application for restoration to roll of solicitors), the court shall order service on the Discipline Tribunal and the Council.

Procedure after order for intimation and service

68.5. The court shall, after an order for intimation and service under rule 68.4, proceed on the petition summarily in such manner as it thinks fit.

(a) Section 16(1) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 1.

(b) Section 54(2) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 29.

(c) Section 41 of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 19 and by the Solicitors (Scotland) Act 1988 (c.42), Schedule 1, paragraph 13 and Schedule 2.

Appeals under section 54(1) of the Act of 1980

68.6. In an appeal under section 54(1) of the Act of 1980 (appeal against decision of tribunal relating to discipline)-

- (a) the court may substitute any other punishment for that imposed by the decision appealed against, or make any order in relation to it which it thinks fit;
- (b) where the petitioner is a person or one of the persons who complained of the alleged professional misconduct of the solicitor, the court may order that person to give security for expenses (including the cost of extending the notes of evidence adduced before the Discipline Tribunal) as a condition of proceeding with the petition.

Remits for further inquiry

68.7.-(1) In an application or appeal under the Act of 1980, the court may remit to any person to make further inquiry into the facts, or to take further evidence and to report to the Court.

(2) On completion of a report made under paragraph (1), the person to whom the remit was made shall send his report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall-

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.