

THE LAW SOCIETY OF SCOTLAND PRACTICE RULES (AMENDMENT NO 2 RULES) 2017

Rules dated [] 2017 made on behalf of the Council of the Law Society of Scotland by the Regulatory Committee formed in accordance with section 3B(1) of the Solicitors (Scotland) Act 1980 under sections 34(1), 34(1D), 35(1), and 37(6) of that Act and approved by the Lord President under section 34(3) of that Act.

Citation and Commencement

- 1.- (1) These rules may be cited as The Law Society of Scotland Practice Rules (Amendment No. 2 Rules) 2017.
- (2) These rules shall come into operation on [] 2017.

Definition and Interpretation

- 2.- (1) In these rules, the "Principal Rules" shall mean The Law Society of Scotland Practice Rules 2011.
- (2) The Interpretation Act 1978 applies to the interpretation of these rules as it applies to the interpretation of an Act of Parliament.

Amendments to the Principal Rules

- 3.- In the preamble to the Principal Rules paragraph (a) shall be amended so that the words in parenthesis in the third line thereof shall read '(save for rules 6, 7 and 9 in that Section)' and a new paragraph shall be added after paragraph (f) as follows:

'(g) in the case of rule 9 in Section B of these rules, section 34(1D) of the Act and approved by the Lord President in terms of section 34(3) of the Act

and the remaining paragraphs of the preamble shall be renamed accordingly.
- 4.- Sub-paragraph (b) of rule A3.1.8 of the Principal Rules shall be amended to read:

'(b) rules 1, 6, 7 and 9 in Section B'
- 5.- The following shall be added after rule B1.15 in the Principal Rules:

'Rule B1.16: Duty to Co-operate with the Society

1.16 You must deal with the Society in an open, timely and co-operative manner, so as to enable the Council to properly exercise and fulfil its regulatory functions.

6.- Rule B5.5.1 of the Principal Rules shall be deleted and the following substituted therefor:

'5.5.1.A A practice unit shall ensure that its Client Relations Manager or Managers:

- (i) maintain(s) a central record of each complaint and the way it is dealt with, which record shall include, as a minimum for each complaint, the data fields described at 1 to 13 in rule 5.5.1.B; and
- (ii) shall deliver to the Society and the Scottish Legal Complaints Commission on request by either of those bodies, provided that not less than one year has elapsed since any previous request, a copy of the said central record within a period not exceeding 21 days from the date on which the request is made, which copy shall include, as a minimum, the data fields described at 1, 3 to 6 and 8 to 13 in rule 5.5.1.B.

5.5.1.B The data fields referred to in rule 5.5.1.A are:

1. File reference
2. Complainer name and contact details;
3. Date the complaint was made;
4. Method by which the complaint was made;
5. Description of the substance of the complaint;
6. Identity of the person responsible for dealing with the complaint;
7. Identity of the person against whom the complaint was directed;
8. Type of business in respect of which the complaint was made;
9. Action taken by the practice unit in relation to the complaint;
10. Date the complaint was closed;
11. Whether or not the complaint was resolved;
12. Whether or not the complainer was directed to the SLCC;
13. Whether or not any feedback was obtained from the complainer (and, if so, the nature of that feedback).'

7.- In rule B6.1.1 of the Principal Rules:

(a) in the definition of 'accounting records' the following shall be deleted:

'client due diligence documents and client financial information obtained for the purposes of compliance with the Money Laundering Regulations,'

(b) the following shall be deleted:

'independent legal professional' the meaning given in regulation 3(9) of the Money Laundering Regulations'

'Money Laundering Regulations' the Money Laundering Regulations 2007 (S.I. 2007 No. 2157)'

(c) in the definition of 'other financial institution' '3(3)' shall be deleted and '10(2)' substituted therefor.

- 8.- In rule B6.7.1 of the Principal Rules sub-paragraph (c) shall be deleted.
- 9.- Rule B6.16.2 of the Principal Rules shall be deleted and rule B6.16.3 of the Principal Rules renumbered accordingly. The reference in rule B6.16.1 of the Principal Rules to 'rules 6.16.2 and 6.16.3' shall be amended to refer only to rule 6.16.2 as renumbered.
- 10.- In sub-paragraph (b) of rule B6.18.3 of the Principal Rules the words 'the Society to discharge its duties as supervisory authority under the Money Laundering Regulations' shall be deleted and the words '*Not used*' substituted therefor.
- 11.- The current text of rules B6.23.1 and B6.23.2 of the Principal Rules shall be deleted and '*Not used*' substituted therefor.
- 12.- An additional rule, to be numbered B9, shall be added after rule B8 of the Principal Rules in the terms set out in the Schedule to these rules.
- 13.- In Schedule 1 to the Principal Rules:

(a) the following shall be added after the definition of Member State:

'Money Laundering Regulations

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S. I. 2017 No. 692)'

(b) the following shall be added after the definition of 'regulated person':

'regulatory functions'

the same meaning as given in section 3F
of the 1980 Act'

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Schedule

Rule B9: Money Laundering & Terrorist Financing

Definitions and Interpretation

9.1 In this rule 9, unless the context otherwise requires, terms listed in the first column of rule 9.1 shall have the meanings respectively ascribed to them in the second column of that rule:

<u>Term</u>	<u>Definition</u>
Certificate	a certificate in such form as the Council may from time to time prescribe and different forms may be prescribed for different circumstances;
durable medium	any method by which information is stored in a way accessible for future reference for no less than the period required to procure and evidence compliance with this rule 9 and which allows the unchanged reproduction of the information stored by visual record and by immediately available print-out;
print-out	a printed or typewritten copy of any information stored in a durable medium;
records	all documents or permanent records held on a durable medium (whether manual, mechanical or computerised) produced or obtained for the purposes of procuring or evidencing compliance with the Money Laundering Regulations, as defined in regulation 3(1) of the Money Laundering Regulations
relevant person	the accounting period applicable to the relevant supervised person in terms of rule 6 in Section B
reporting period	a relevant person for which the Society is the supervisory authority in terms of the Money Laundering Regulations
supervised person	

Application of rules

- 9.2 Where any of the provisions of rule 9 apply to a practice unit:
- (a) they shall also apply to the managers of the practice unit; and
 - (b) no regulated person within the practice unit shall cause or knowingly permit the practice unit not to comply with any such provision.

Duty to comply with Money Laundering Regulations

- 9.3 Every supervised person shall:
- (a) comply with the provisions of the Money Laundering Regulations;
 - (b) demonstrate such compliance to the Society on request;
 - (c) report any breach of the Money Laundering Regulations to the Society as soon as practicable after discovery;
 - (d) remedy any such breach, which is capable of remedy, as soon as practicable after discovery;
 - (e) timeously provide all such information, records and co-operation as the Society may require to enable the Society to properly exercise and fulfil its supervisory functions in terms of the Money Laundering Regulations.

Records required to be kept

- 9.4 Every supervised person shall at all times keep such records as are necessary to demonstrate compliance with the Money Laundering Regulations and these rules.

Obligation to deliver a Certificate

- 9.5 A supervised person shall deliver to the Council within one calendar month (or within such other period as the Council may prescribe) of the completion of each reporting period a Certificate in respect of that reporting period.
- 9.6 The Council shall be entitled to use the information contained in the Certificate to monitor compliance by the supervised person with rule 9, and to assess levels of risk in order to allow the Society effectively to target its supervisory activity. The Council may request a supervised person to provide a Certificate on a more frequent basis than provided for in terms of rule 9.5, and/or a Certificate containing more or less detailed information, according to its assessment of that supervised person's risk profile.
- 9.7 The Council may, in any case on cause satisfactory to it being shown, extend the period within which a Certificate is required to be delivered, but such extension shall in no case exceed three months from the date on which the Certificate should have been delivered.
- 9.8 If a supervised person fails to deliver a Certificate by the expiry of any extension period under rule 9.7 the Council will determine whether further action is to be taken against the supervised person or any regulated person who is a manager or employee of the supervised person in respect of such failure.

Who may sign a Certificate

- 9.9 All sections of a Certificate required under rule 9 must be signed by the responsible officer of the supervised person (if appointed) or, failing such appointment, by the nominated officer of the supervised person. Where the supervised person is a practice unit with one manager, that manager must sign the Certificate. Where the supervised person is a practice unit with two or more managers, two managers must sign the Certificate.

Reviews, inspections and investigations on behalf of the Council

- 9.10 The Council may carry out:

- (a) such thematic and/or desk-based reviews and risk assessments as the Council considers necessary or desirable, referred to in rule 9 as a review;
- (b) a routine investigation, referred to in rule 9 as an inspection; and
- (c) a non-routine investigation, referred to in rule 9 as an investigation.

all for the purposes of enabling the Society to properly exercise its functions and discharge its duties as supervisory authority under the Money Laundering Regulations.

- 9.11 The Council may, by giving notice, require any supervised person to produce records for the inspection or review of a person authorised by the Council and at a date, time and place to be fixed by the Council. If the place fixed by the Council for the inspection or review requires the transfer to that place of records in physical form, the Council shall, on such conditions as to the cost and distance of such transfer as it may from time to time prescribe, pay the reasonable expenses incurred by the supervised person in respect of such transfer.
- 9.12 If at any time there is a reasonable apprehension on the part of the Council that a supervised person has not complied with, is not complying with or may not comply with rule 9, the Council may authorise a person to conduct such investigation of the supervised person as the Council may consider appropriate. The Council shall give notice of its authorisation of such a person to conduct such investigation and of the date, time and place of such investigation.
- 9.13 The Council may, in any case on cause satisfactory to it being shown, extend the period within which a supervised person may produce records as required by a person authorised by the Council under rule 9, but such extension shall in no case exceed three months from the date on which records should have been produced.
- 9.14 If a supervised person fails to produce records prior to the expiry of any extension period under rule 9.13, the Council will determine whether further action is to be taken against the supervised person in respect of such failure.
- 9.15 A supervised person shall provide a person authorised by the Council under rule 9 reasonable co-operation in the conduct of that person's review, inspection or investigation (as the case may be) including, without prejudice to the foregoing generality, the production of records as such person may reasonably require and, in the case of an investigation, the granting of authorisation (including by way of mandate) to contact clients or third parties for the production by such clients or third parties of documents, records and other information as such person may reasonably require.

- 9.16 Any person authorised by the Council under rule 9.11 shall report to the Council on the result of his or her review or inspection to the extent he or she considers it necessary to do so. Any person authorised by the Council under rule 9.12 shall report to the Council on the result of his or her investigation.

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