

AGENDA

for the

Special General Meeting of the Law Society of Scotland
Thursday 25 January 2018 at 5:30pm in the Society's Offices at Atria One,
144 Morrison Street, Edinburgh, EH3 8EX

1. Practice Rules – proposed changes to the practice rules on incidental financial business – Resolution number 1

Motion from the Regulatory Committee on Amendments to the Society's Practice Rules – Resolution No 1.

"The Regulatory Committee of the Law Society of Scotland in terms of Section 3B of the Solicitors (Scotland) Act 1980 proposes that the Practice Rules be amended in the following terms –

THE LAW SOCIETY OF SCOTLAND PRACTICE RULES (AMENDMENT No. 1 RULES) 2018

Rules dated [] 2018 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 section 34(1) of that Act with the approval of 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. 1 Rules) 2018.

(2) These rules shall come into operation on [] 2018.

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 rule C2 of the Principal Rules delete all references to “insurance mediation activity” and replace with “insurance distribution activity”.
- 4 In rule C2.1.1 of the Principal Rules delete the reference to “Directive 2002/92/EC” and replace with “Directive (EU) 2016/97”.
- 5 In rule C2.1.1 of the Principal Rules delete the defined term “insurance intermediary” and its related meaning.
- 6 In rule C2.1.1 of the Principal Rules following shall be added and all defined terms re-ordered alphabetically:

“durable medium	any instrument which:
	(a) enables the recipient to store information personally addressed to them in a way accessible for future reference and for a period of time adequate for the purpose of the information; and
	(b) allows the unchanged reproduction of the information stored
insurance distribution	the meaning given by Article 2 of the Directive and shall include reinsurance distribution as defined by Article 2 of the Directive
insurance intermediary	a person who carries on insurance distribution activity
insurance-based investment product	an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:
	(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);
	(b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
	(c) pension products which, under

- national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider
- Insurance Product Information Document a document containing the information that meets the requirements of Article 20(5) to Article 20(8) of the Directive
- remuneration any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities”
- 7 In rule C2.4 of the Principal Rules delete the “and” after clause C2.4(e) and insert the following as rule C2.4(f) and re-number accordingly:
- “(f) provided that the insurance distribution carried out by the practice unit is not in relation to the sale of insurance-based investment products; and”.
- 8 In rule C2 of the Principal Rules insert the following as rule C2.5.3:
- “2.5.3 The Council may notify the FCA of any details disclosed to it in the application form under rule 2.5.1 or pursuant to rule 2.5.2.”
- 9 In rule C2 of the Principal Rules delete rule C2.13 and replace with the following:
- “Provision of information**
- 2.13.1 In good time before the conclusion of a contract of insurance, the information set out in Schedule A to this rule 2 must be provided to the client.
- 2.13.2 In addition to the information required under rule 2.13.1, a licensed person must ensure that the client is given objective and relevant information about a contract of insurance in good time prior to the conclusion of the contract, so that the client can

make an informed decision. A licensed person must provide this information to the client:

- (a) whether or not it gives a personal recommendation; and
- (b) irrespective of the fact that the contract of insurance is offered as part of a package with:
 - (i) a non-insurance product or service; or
 - (ii) another contract of insurance.

2.13.3 A licensed person must ensure that the level of information provided takes into account the complexity of the contract of insurance and the individual circumstances of the client.

2.13.4 When dealing with a client who is an individual and who is acting for purposes which are outside his trade or profession the information provided under rule 2.13.2 must include an Insurance Product Information Document.

2.13.5 A licensed person must provide the information required in rule 2.13.4 by way of an Insurance Product Information Document for each contract of insurance (other than a pure protection contract).

2.13.6 Where the contact of a licensed person with a client is limited to introducing that client to another insurance intermediary, the client must be given the information specified in paragraph 1 to 5, 8 and 9 of Schedule A to this rule 2 on initial contact. The information may be provided orally or in writing.

2.13.7 Where a licensed person distributes contracts of insurance, it must have in place adequate arrangements to:

- (a) obtain from the manufacturer of the contract of insurance:
 - (i) all appropriate information on the contract of insurance and the product approval process; and
 - (ii) the identified target market of the contract of insurance; and
- (b) understand the characteristics and the identified target market of each contract of insurance.

2.13.8 Where a licensed person acts as an insurance intermediary in relation to a contract of insurance, and selects contracts from a limited number of insurance undertakings or from a single insurance undertaking then it must maintain, and keep up to date, for each type of contract of insurance that it deals with, a list of insurance undertakings that it selects from or deals with and the relevant list must be made available to any client, in writing, on request.

2.13.9 In good time before the conclusion of the initial contract of insurance and if necessary, on its amendment or renewal, a licensed person must provide the client with information:

- (a) on the nature of the remuneration received in relation to the insurance contract;
- (b) about whether in relation to the contract the licensed person works on the basis of:
 - (i) a fee, that is remuneration paid directly by the client;
 - (ii) a commission of any kind, that is remuneration included in the premium;

- (iii) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or
- (iv) a combination of any type of remuneration set out above in (i), (ii) and (iii).

2.13.10 Where a fee is payable, a licensed person must inform the client of the amount of the fee before the client incurs liability to pay the fee, or before conclusion of the contract of insurance, whichever is earlier and to the extent that it is not possible for that amount to be given, a licensed person must give the client the basis for its calculation. This rule 2.13.10 applies to all such fees that may be charged during the life of the contract of insurance.”

- 10 In Rule C2 of the Principal Rules insert the following as new Rule C2.14 and re-number accordingly:

“Information conditions - means of communication

2.14.1 Rules 2.14.2 to 2.14.5 apply to all information required to be provided to a client in this Part IV of these Rules.

2.14.2 A licensed person must communicate information to the client on paper or using any of the following means:

- (a) a durable medium other than paper where the following conditions are satisfied:
 - (i) the use of a durable medium other than paper is appropriate in the context of the business conducted between the licensed person and the client; and
 - (ii) the client has been given the choice between information on paper and on a durable medium other than paper and has chosen a durable medium other than paper; or
- (b) on a website (where it does not constitute a durable medium) where the following conditions are satisfied:
 - (i) the provision of that information by means of a website is appropriate in the context of the business conducted between the licensed person and the client;
 - (ii) the client has consented to the provision of that information by means of a website;
 - (iii) the client has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
 - (iv) the licensed person ensures that the information remains accessible on the website for such period of time as the client may reasonably need to consult it.

2.14.3 A licensed person must communicate the information:

- (a) in a clear and accurate manner, comprehensible to the client;
- (b) in an official language of the Member State in which the insured risk, or proposed insured risk, is situated or in any other language agreed upon by the parties; and

(c) free of charge.

2.14.4 Where a licensed person communicates the information using a durable medium other than paper or by means of a website, the licensed person must, upon request and free of charge, send the client a paper copy of the information.

2.14.5 A licensed person must ensure that a client's choice or consent to receive the information by means of a website (whether a durable medium or where the conditions under rule 2.14.2(b) are satisfied) is an active and informed choice or consent."

- 11 In rule C2.15 (prior to renumbering) of the Principal Rules delete the words "Unless rule 2.15.4 applies", capitalise at the beginning, delete rule 2.15.4 and renumber accordingly.
- 12 In rule C2 of the Principal Rules insert the following as a new Rule C2.17.1 and renumber accordingly:

"Cross Selling Requirements

2.17.1 When a licensed person offers an insurance product ancillary to and part of a package or in the same agreement with a non-insurance product or service, it must offer the client the option of buying the non-insurance goods or services separately."

- 13 In rule C2.16.1 (prior to renumbering) of the Principal Rules delete the words "article 6(1) of the Directive" and replace with "article 4(1) of the Directive", delete the full stop at the end of that rule, add the following and renumber accordingly:

"together with the following information:

- (a) the name, address and, where applicable, the registration number of the licensed person;
- (b) the Member State or Member States of the European Union in which the licensed person intends to operate; and
- (c) the category of the licensed person by reference to the Directive and, where applicable, the name of any insurance or reinsurance undertaking represented."

- 14 In Schedule A to rule 2 of the Principal Rules delete the words “or immediately after” from the heading.
- 15 In Schedule B to rule 2 of the Principal Rules insert “(e)” at the beginning of the last paragraph.
- 16 In rule C2 of the Principal Rules amend all numbering and cross references to reflect the foregoing changes.”

2. Practice Rules – proposed changes to the practice rules on anti-money laundering – Resolution number 2

Motion from the Regulatory Committee on Amendments to the Society's Practice Rules – Resolution No 2.

“The Regulatory Committee of the Law Society of Scotland in terms of Section 3B of the Solicitors (Scotland) Act 1980 proposes that the Practice Rules be amended in the following terms –

THE LAW SOCIETY OF SCOTLAND PRACTICE RULES (AMENDMENT NO. 2 RULES) 2018

Rules dated [] 2018 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) 2018.
- (2) These rules shall come into operation on [] 2018.

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 [] 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.- 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 the meaning given in regulation 3(9)
professional of the Money Laundering
Regulations'

'Money Laundering the Money Laundering Regulations
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.

7.- In rule B6.7.1 of the Principal Rules sub-paragraph (c) shall be deleted.

- 8.- 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.
- 9.- 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.
- 10.- The current text of rules B6.23.1 and B6.23.2 of the Principal Rules shall be deleted and '*Not used*' substituted therefor.
- 11.- 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.
- 12.- 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,
relevant person	as defined in regulation 3(1) of the Money Laundering Regulations
reporting period	the accounting period applicable to the relevant supervised person in terms of rule 6 in Section B
supervised person	a relevant person for which the Society is the supervisory authority in terms of the Money Laundering Regulations

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.