

ACTS SUPPLEMENT

to The Uganda Gazette No. 72 Volume XCV dated 10th December, 2002.

Printed by UPPC, Entebbe, by Order of the Government.

Act 27 *Advocates (Amendment) Act* **2002**

THE ADVOCATES (AMENDMENT) ACT, 2002.

ARRANGEMENT OF SECTIONS.

Section.

1. Short title.
2. Amendment of Act No. 22 of 1970.
3. Amendment of section 2 of principal Act.
4. Insertion of new section 2A.
5. Amendment of section 3 of principal Act.
6. Insertion of new section 3A.
7. New Part IIA of principal Act.
8. Replacement of section 7 of principal Act.
9. Amendment of section 10 of principal Act.
10. Amendment of section 12 of principal Act.
11. Amendment of section 13 of principal Act.
12. Miscellaneous amendments in relation to fines.
13. Insertion of new section 14A.
14. Insertion of new section 15A.
15. Amendment of section 17 of principal Act.
16. Amendment of section 19 of principal Act.
17. Replacement of section 20 of principal Act.
18. Amendment of section 21 of the principal Act.
19. Repeal of section 22 of principal Act.
20. Replacement of section 23 of principal Act.
21. Replacement of section 24 of principal Act.
22. Amendment of section 27 of principal Act.
23. Amendment of section 28 of principal Act.

Section.

24. Amendment of section 73 of principal Act.
25. Power to amend new Schedule 2A of principal Act.
26. Miscellaneous amendments.
27. Amendment of section 82 of principal Act.
28. Insertion of new Schedule 2A.
29. Transitional provisions.

THE ADVOCATES (AMENDMENT) ACT, 2002.

An Act to amend the Advocates Act, 1970 to provide for easier access to the Uganda Bar both in terms of required qualifications for entry and procedures, to create a Committee for Legal Education and Training to supervise and control professional legal education; to revise sanctions and penalties; and to provide for other related matters.

DATE OF ASSENT: 29th November, 2002.

Date of Commencement: 10th December, 2002.

BE IT ENACTED by Parliament as follows:

1. This Act may be cited as the Advocates (Amendment) Act, 2002. Short title.

2. The Advocates Act, 1970, in this Act referred to as the "principal Act" is amended in section 1— Amendment of Act No. 22 of 1970.

(A) by substituting for subsection (1) the following subsection.

"Establishment of Law Council

1(1) There is established a Law Council which shall consist of—

- (a) a Judge of the Courts of Judicature appointed by the Attorney-General after consultation with the Chief Justice, who shall be Chairperson of the Law Council;
- (b) the Chairperson of the Committee on Legal Education and Training;
- (c) the Solicitor-General or his or her representative not below the rank of Principal State Attorney;
- (d) the President of the Uganda Law Society;
- (e) the Director of the Law Development Centre;
- (f) the Dean of the Faculty of Law of Makerere University;
- (g) two practising advocates elected by the Uganda Law Society;
- (h) a judicial officer not below the rank of a Chief Magistrate appointed by the Magistrates through their national professional body by whatever name called;
- (i) a person co-opted by the Law Council as it may deem necessary."

(B) by substituting for subsection(3) the following—

“(3) If the Chairperson or any of the members of the Law Council appointed under paragraph (g) or (h) of subsection (1)—

(a) dies;

(b) resigns;

(c) is absent from Uganda for a continuous period exceeding six months; or

(d) is, in the opinion of the Attorney-General, unable, by reason of infirmity of body or mind to perform the duties of that office,

that office shall become vacant and the vacancy shall be filled by the appointing authority”.

(C) by inserting at the end of the section the following new subsections—

“(4) In arriving at a decision under paragraph (d) of subsection (3) of this section, the Attorney-General shall act on the advice of a medical board which shall be constituted at his or her request by the professional head of the medical services of Uganda.

(5) In this section, “appointing authority” means the authority responsible for appointing or electing under subsection (1), a person to whom subsection (3) of this section applies”.

3. Section 2 of the principal Act is amended—

(a) by substituting for paragraph (a) the following—

“(a) to exercise through the medium of the Committee on Legal Education and Training, general supervision and control over professional legal education in Uganda including continuing legal education for persons qualified to practise law in Uganda”.

(b) by repealing paragraph (b).

4. The principal Act is amended by inserting after section 2 a new section 2A as follows—

Amendment
of section 2
of principal
Act.

Insertion of
new section
2A.

"Funds of
Law Council
and
Committees

2A. (1) The Law Council and the Committees established under this Act shall have powers to charge fees in the performance of their functions under this Act.

(2) The fees under subsection (1) shall include—

(a) fees for application for enrolment under section 7 of this Act;

(b) payment for a special practising certificate under section 12 of this Act;

(c) payment for expenses of the Disciplinary Committee under section 19 of this Act;

(d) any other payments that may appropriately arise under the provisions of this Act.

(3) Notwithstanding the funds obtained under subsections (1) and (2) of this section, any expenses incurred by the Law Council and the Committees established under this Act, in the performance of their functions or duties under this Act, shall be defrayed out of the moneys provided by Parliament."

5. Section 3 of the principal Act is amended—

(a) in subsection (2), by inserting "Law" before "Council";

(b) by substituting for subsection (3) the following subsection—

"(3) The quorum of the Law Council shall be five, but subject to the requirement of a quorum, the Law Council may act notwithstanding any vacancy in its membership".

Amendment
of section 3
of principal
Act.

6. The principal Act is amended by inserting after section 3, the following new section—

Insertion of
new section
3A.

“Remuner-
ation and
allowances
of Law
Council and
committees

3A A member of the Law Council, the Disciplinary Committee and the Committee on Legal Education and Training shall be paid such remuneration and allowances and at such rates as the Minister responsible for public service may, after consultation with the Minister responsible for finance, determine”.

7. The principal Act is amended by inserting immediately after Part II, a new Part IIA as follows—

New Part
IIA of
principal
Act.

“PART IIA—SUPERVISION OF PROFESSIONAL EDUCATION
AND TRAINING

Committee
on Legal
Education
and Training

6A (1) There is established for the purpose of discharging the Law Council’s functions with respect to general supervision of professional legal education, a Committee to be known as the Committee on Legal Education and Training, in this Part referred to as the “Committee”.

Composition

6B (1) The Committee shall consist of—

- (a) an experienced law teacher with distinguished service as a legal practitioner, appointed by the Law Council who shall be Chairperson;
- (b) a Judge of the Courts of Judicature, appointed by the Attorney-General in consultation with the Chief Justice;
- (c) the Dean of the Faculty of Law at Makerere University or his or her representative being a person not below the rank of Senior Lecturer;
- (d) the Director of the Law Development Centre or his or her representative being a person not below the rank of Senior Lecturer;

- (e) a representative of the Uganda Law Society elected by that Society;
 - (f) a representative of the Ministry responsible for justice appointed by the Attorney-General;
 - (g) one person nominated by institutions engaged in continuing legal education, and appointed by the Law Council; and
 - (h) a representative of the Ministry responsible for education appointed by the Minister responsible for education.
- (2) The Chairperson and members of the Committee shall hold office for a period of three years and shall be eligible for re-appointment.
- (3) If the Chairman or any of the members of the Committee—
- (a) dies;
 - (b) resigns;
 - (c) is absent from Uganda for a continuous period exceeding six months without reasonable excuse; or
 - (d) is in the opinion of the Attorney-General, unable by reason of infirmity of body or mind to perform the duties of that office, that office shall become vacant and the vacancy shall be filled by the appointing authority.
- (4) In arriving at a decision under paragraph (d) of subsection (3) of this section, the Attorney-General shall act on the advice of a medical board which shall be constituted at his or her request by the professional head of the medical services in Uganda.

(5) In this section, “appointing authority” means the authority responsible for appointing or electing under subsection (1) a person to whom subsection (3) applies.

Functions of
Committee

6C (1) The functions of the Committee are—

- (a) to serve as the medium of the Law Council in exercising general supervision and control over professional legal education in Uganda;
- (b) to approve courses of study and to provide for conduct of qualifying examinations for the purposes of this Act;
- (c) to prescribe the professional requirements for admission to the post-graduate Bar Course and qualifications necessary for eligibility for enrolment as an advocate;
- (d) to conduct and promote continuing legal education for qualified legal practitioners; and
- (e) to prescribe the standards and courses for training and recognition of para-legals and their functions.

(2) Meetings of the Committee shall be held at such times and places as the Chairperson of the Committee may determine.

(3) The Chairperson of the Committee shall preside at all meetings of the Committee and in the absence of the Chairperson the members of the Committee present may elect a person from among their number to preside at that meeting.

(4) The quorum at meetings of the Committee shall be five members but subject to the requirement of a quorum, the Committee may act notwithstanding any vacancy at the meeting.

(5) Subject to the provisions of this section, the Committee shall have power to regulate its own proceedings and may make regulations governing its procedures.

(6) The office of the Secretary of the Law Council shall provide a Secretary to the Committee who shall perform such functions as the Committee may assign to him or her.

(7) In this section, “para-legal” means any person other than an advocate, whose occupation relates to the legal profession and requires knowledge or study of any aspect of the law”.

8. For section 7 of the principal Act there is substituted the following—

Replacement
of section 7
of principal
Act.

“Admission
and
enrolment of
advocates

7(1) Subject to the provisions of this section, a person to whom this section applies, shall be eligible to have his or her name entered on the Roll.

(2) Any person eligible to have his or her name entered on the Roll may make application to the Law Council, and the Law Council, if satisfied that the applicant is so eligible and is a fit and proper person to be an advocate, shall, unless cause to the contrary is shown to its satisfaction, direct the Registrar, on receipt of the prescribed fee, to enter the applicant’s name on the Roll, and the Registrar shall comply with the direction.

(3) The Secretary shall, within fourteen days from the date of the making by the Council of a decision under subsection (2), notify the applicant of the decision made by the Law Council.

(4) Any person aggrieved by the decision of the Law Council on enrolment, may, within thirty days from the notification of the decision of the Law Council, apply to the High Court for a review.

(5) The review of the decision shall be heard by a panel of three Judges.

(6) The High Court may, upon a review under this section, confirm or reverse or vary the decision of the Law Council and make such other orders as the Court may think fit.

(7) Every application under this section shall be made and advertised in such manner as may be prescribed by regulations made by the Law Council.

(8) This section applies to a person who—

(a) is the holder of a degree in law granted by a university in Uganda; or

(b) is a Uganda citizen and—

(i) a holder of a degree in law obtained from a university or other institution recognised by the Law Council in a country operating the common law system; or

(ii) has been enrolled as a legal practitioner by whatever name called, in any country operating the common law system and designated by the Law Council by regulations; or

(iii) holds a qualification that would qualify him or her to be enrolled in any country operating the common law system and designated by the Law Council by regulations.

(9) In the case of a person to whom subsection (8) applies being a person who has not practised for a minimum period of one year, that person shall not be eligible to have his or her name entered on the Roll unless he or she has complied with such requirements, whether relating to instruction, examination or otherwise, as to the acquisition of professional skill and experience, as may be specified in regulations made by the Law Council.

(10) In the case of a person to whom paragraph (b) (ii) of subsection (8) of this section applies, being a person who has practised as a legal practitioner for one year or more, but less than five years, that person is not eligible for enrolment under this section unless he or she works under the surveillance of and in chambers approved by the Law Council for that purpose or he or she serves as a State Attorney for at least one year.

(11) In the case of a person to whom paragraph (b) (ii) of subsection (8) applies, being a person who has practised as a legal practitioner for five years or more, that person may be enrolled without having to work in chambers approved by the Law Council for that purpose or serving as a State Attorney.

(12) The fee mentioned in subsection (2) of this section shall be prescribed by the Attorney-General by statutory instrument.

(13) Notwithstanding subsection (1), the Law Council may make regulations under which a person to whom this section applies, other than a person referred to in subsection (8)(a), (10) or (11), may be required to undergo courses of study in such subjects relevant to the law in force in Uganda as may be specified in the regulations and to satisfy examiners in those subjects.”

9. Section 10 of the principal Act is amended by inserting immediately after subsection (5) the following new subsection—

Amendment
of section
10 of
principal
Act.

“(6) Notwithstanding anything in this Act, regulations made by the Law Council may, subject to such conditions as may be prescribed in the regulations, permit any person undergoing any instruction for the acquisition of professional skill or experience for the purpose of enrolment, to have a right of audience without enrolment or a practising certificate, before such courts as may be prescribed by the regulations, if that person appears with an advocate possessing a valid practising certificate or a person mentioned in section 5 of this Act”

10. The principal Act is amended by substituting for subsection (1) of section 12 the following subsections—

Amendment
of section
12 of
principal
Act.

“Temporary
admission to
right of
practice.

12. (1) Notwithstanding the other provisions of this Part of this Act, the Law Council may, subject to the person obtaining a special practising certificate, admit to practise as an advocate for the purpose of any one case or matter, any legal practitioner, by whatever name called, of any country operating the common law system and designated by the Law Council under subsection (8) of section 7 of this Act, who has come or intends to come to Uganda for the purpose of appearing in that case or matter.

(1a) A person referred to in subsection (1) is only entitled to appear or act—

(a) in the case or matter for which that person is admitted; and

(b) if that person is instructed by, and if when appearing in any Court in the conduct of the case or matter, that person appears together with, an advocate with a valid practising certificate or a person mentioned in section 5 of this Act”.

11. Section 13 of the principal Act is amended—

(a) by substituting for subsection (3) the following new subsection—

“(3)Whenever an advocate is adjudicated bankrupt—

(a) the Official Receiver shall, after hearing a representative of the Law Council, notify the Registrar of the adjudication;

(b) the adjudication shall operate immediately to suspend the advocate's practising certificate;

(c) the advocate shall return the practising certificate to the Registrar, who shall return the practising certificate to the advocate when—

(i) the adjudication in bankruptcy is discharged; or

(ii) subject to the order of the Law Council, the adjudication in bankruptcy is terminated under paragraph (d)(ii) of this subsection;

Amendment
of section
13 of
principal
Act.

(d) the suspension shall continue until—

(i) the adjudication in bankruptcy is discharged; or

(ii) the Law Council, on the petition of the advocate, in its discretion, terminates the suspension of the advocate either unconditionally or subject to such terms and conditions as it deems fit.”; and

(b) in subsection (4) by substituting for “Chief Justice” the words “Law Council” and by substituting for “subsection (3)” the words “paragraph (d) of subsection (3)”.

12. The principal Act is amended as follows—

(a) in subsection (5) of section 13, by substituting for “two hundred shillings” the words “ten currency points”;

(b) in subsection (2) of section 14, by substituting for “ten thousand shillings” the words “forty currency points”;

(c) in subsection (5) of section 18, by substituting for “one thousand shillings” the words “ten currency points”;

(d) in section 44, by substituting for “twenty thousand shillings” the words “fifty currency points”;

(e) in section 69—

(i) by substituting for “ten thousand shillings”, “fifty currency points”;

Miscellaneous amendments in relation to fines.

(ii) by substituting for “five thousand shillings”, the words “twenty currency points”;

(f) in subsection (1) of section 78 by substituting for “five thousand shillings” the words “twenty currency points”.

Insertion of
new section
14A.

13. The principal Act is amended by inserting immediately after section 14 the following new section—

“Protection of
clients of
advocates

14A (1) Where—

(a) an advocate practises as an advocate contrary to subsection (1) of section 14; or

(b) in any proceedings, for any reason, an advocate is lawfully denied audience or authority to represent a party by any court or tribunal; then—

(i) no pleading or contract or other document made or action taken by the advocate on behalf of any client shall be invalidated by any such event; and in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event;

(ii) the client who is a party in the proceedings shall, where necessary, be allowed time to engage another advocate or otherwise to make good any defects arising out of any such event.

(2) Any advocate not in possession of a valid practising certificate or whose certificate has been suspended or cancelled and who practises as an advocate, commits professional misconduct; and the

Law Council or any person may make a complaint to the Disciplinary Committee in respect of the misconduct; and paragraphs (b)(i) and (b)(ii) of subsection (1) shall apply with necessary modifications.

(3) In addition to any punishment prescribed under any provision of this Act, the client of an advocate to whom subsection (1) or (2) relates, is entitled to a refund by the advocate concerned of any fees paid to that advocate by the client and also to compensation in respect of any costs or loss incurred by the client as a result of the conduct of the advocate.”

14. The principal Act is amended by inserting immediately after section 15 following new section—

Insertion of new section 15A.

“Pro bono legal services

15A. (1) Every advocate shall provide pro bono services when required by the Law Council or pay a fee prescribed by regulations made by the Law Council in lieu of such services.

(2) Where any advocate does not comply with subsection (1), the Law Council shall refuse to issue or renew a practising certificate to that advocate under subsection (1) of section 11 of this Act.

(3) In this section, “pro bono services” means professional services of an advocate given for the public good to indigent persons without charge”.

18

15. Section 17 of the principal Act is amended—

Amendment of section 17 of principal Act.

(a) by substituting for subsection (1) the following new subsection—

“Establishment of Disciplinary

17. (1) There is established a Committee called the Disciplinary Committee which shall consist of—

- (a) the Solicitor-General or his or her representative not below the rank of Principal State Attorney;
- (b) the Director of the Law Development Centre;
- (c) the President of the Uganda Law Society;
- (d) any other two members appointed by the Law Council from among its members."

(b) by inserting immediately after subsection (7) of that section the following new subsection—

"(8)The office of the Secretary of the Law Council shall provide prosecuting Counsel to the Disciplinary Committee."

20

16. Section 19 of the principal Act is amended—

(i) by substituting for subsection (2) the following subsection—

"(2) Upon receipt of a complaint, the Secretary to the Disciplinary Committee shall, as soon as is practicable, refer the complaint to the Committee, which shall fix a date for the hearing of the complaint."

(ii) by the repeal of the proviso to subsection (3) and the insertion immediately after that subsection of the following new subsection—

"(3) (a) Whenever in the opinion of the Committee the complaint does not disclose any prima facie case of professional misconduct, the Committee may, at any stage of the proceedings, dismiss the complaint without requiring the advocate to whom the complaint relates to answer any allegations made against that advocate; but the Committee shall hear the complainant before dismissing the complaint under this subsection.";

Amendment
of section
19 of
principal
Act.

(iii) by substituting for the provisions from paragraphs (d) and (e) of subsection (4) to the end of that subsection, the following—

“(d) that the advocate do pay a fine not exceeding two hundred and fifty currency points;

(e) that the advocate do pay to any person who has suffered loss as a result of the misconduct of the advocate, such sum as, in the opinion of the Committee is just, having regard to the loss suffered by the aggrieved party.”;

(iv) by inserting immediately after subsection (4) the following subsections—

“(4a) The Committee may make such combination of the orders referred to in subsection (4) as the Committee thinks fit.

(4b) An order made under paragraph (d) or (e) of subsection (4) shall be taken to be a decree of the High Court and shall be enforced as if it were an order of the High Court.

(4c) Where a sole practitioner has been suspended from practice or struck off the Roll, the Law Council—

(i) may order the closure of the practitioner’s chambers; and

(ii) shall appoint a trustee to take care of the interests of the practitioner’s clients and the pending matters of the practitioner.”

17. For section ²¹20 of the principal Act there is substituted the following—

Replacement
of section
20 of
principal
Act.

“Decisions of Committee and action on them

20. On the termination of the hearing of a complaint, if the Disciplinary Committee decides to suspend an advocate or strike him or her off the Roll, the Committee shall notify the Registrar of its decision and the Law Council shall—

- (a) cause the decision of the Committee to be published in the *Gazette* and also in a newspaper circulating in the whole of Uganda;
- (b) cause the Registrar of the High Court to be notified of the decision; and
- (c) cause all Chief Magistrates to be notified of the decision”.

Amendment of section 21 of the principal Act.

18. Section 21 of the principal Act is amended by substituting for subsections (1) and (2), the following new subsections—

“Appeal against order of Disciplinary Committee

21. (1) Any party aggrieved by any order of the Disciplinary Committee made under section 19 of this Act may, within fourteen days after the receipt by that party of the notice to be given to that party under section 20 of this Act, appeal against the order to the High Court by giving notice of appeal to the Registrar and shall file with the Registrar a memorandum setting out the grounds of the appeal within thirty days after the giving by that party of the notice of appeal.

(2) The High Court shall set down for hearing any appeal filed under subsection (1) of this section and shall give to the parties to the appeal and the Law Council not less than fourteen days notice of the date of hearing.”

Repeal of section 22 of principal Act.

19. Section 22 of the principal Act is repealed.

20. For section 23 of the principal Act there is substituted the following new section—

Replacement of section 23 of principal Act.

“Represent-
ation before
High Court

23. (1) The parties to the appeal may be represented by an advocate before the High Court and the Law Council shall have the right to appear, by advocate, for the purpose of representing to the High Court the findings of the Disciplinary Committee.

(2) A complainant who appeals against the decision of the Disciplinary Committee and who is unable to afford to pay for the services of an advocate shall be assigned an advocate by the High Court at the expense of the State and that advocate may be paid for his or her services a sum not exceeding an amount prescribed by the Attorney-General by statutory order made in consultation with the Minister responsible for finance.”

21. For section 24 of the principal Act there is substituted the following section—

Replacement of section 24 of principal Act.

“Power of
High Court

24. The High Court shall, after hearing an appeal from the decision of the Disciplinary Committee—

(a) refer the matter back to the Committee with directions for its finding on any specified point; or

(b) confirm, set aside or vary any order made by the Committee or substitute for it such order as it may think fit.

22. Section 27 of the principal Act is amended in subsections (2) and (4), by substituting for “East African country” the words “prescribed country”.

Amendment of section 27 of principal Act.

23. Section 28 of the principal Act is amended—

Amendment of section 28 of principal Act.

(a) in subsection (1), by substituting for “East African country” the words “prescribed country”; and

(b) by substituting for subsection (2), the following subsection—

“(2) In this section “prescribed country” means any country in respect of which the Attorney-General declares by statutory order, that he or she is satisfied that reciprocal effect will be given under the laws of that country to orders made by the Disciplinary Committee under this Act for the suspension of advocates from practice or for striking the names of advocates off the Roll”.

Amendment
of section
73 of
principal
Act.

24. Section 73 of the principal Act is amended by substituting for paragraph (f) of subsection (1), the following new paragraph—

“(f) advertise in relation to his or her professional business, except as may be permitted by regulations made by the Law Council.”

Power to
amend new
Schedule
2A of
principal
Act.

25. Immediately after section 80 of the principal Act there is inserted the following new section—

“Power of
Attorney-
General to
amend
Schedule 2A

80A. The Attorney-General may, with the approval of the Cabinet, by statutory instrument, amend Schedule 2A to this Act.”

Miscella-
neous
amendments.

26. The principal Act is amended as follows—

- (a) by the substitution for “his” wherever it appears, of “his or her”;
- (b) by the substitution for “he” wherever it appears, of “he or she”;
- (c) by the substitution for “him” wherever it appears, of “him or her”;
- (d) by the substitution for “himself” wherever it appears, of “himself or herself”;

(e) by the substitution for “chairman” wherever it appears, of “chairperson”.

27. Section 82 of the principal Act is amended—

Amendment
of section
82 of
principal
Act.

(A) by substituting for the definition of “advocate” the following new definition—

“advocate” means any person whose name is duly entered upon the Roll and—

(a) for the purposes of subsection (2) of section 18 of this Act and Part V of this Act, includes any person mentioned in section 5 of this Act; and

(b) for the purpose of disciplinary proceedings under this Act, includes—

(i) any person permitted to practise under subsection(6) of section 10 of this Act; and

(ii) any person who carries out work of a nature normally performed by an advocate or who is entitled to act or who purports to act as, or pretends to be, an advocate;”

(B) by inserting immediately after the definition of “costs” the following new definition—

“currency point” means the value of currency point specified in Schedule 2A to this Act”; and

(C) by inserting immediately after the definition of “legal assistant” the following new definition—

“legal practice” includes carrying out work of a nature normally performed by an advocate, such as receiving instructions to sue or defend a client in contentious matters, carrying out any form of representation in non-contentious

matters such as drawing of documents of conveyancing, agreements, mortgages, floating of companies, registration of trade marks and patents, negotiations, writing legal opinions, legal correspondence, witnessing and certifying and notarising miscellaneous legal documents;”

Insertion of new Schedule 2A.

28. The principal Act is amended by inserting immediately after Schedule 2 the following new Schedule—

“SCHEDULE 2A

Section 82

CURRENCY POINT.

One currency point is equivalent to twenty thousand shillings.”

Transitional provisions.

29. For the avoidance of doubt, the Law Council and the Disciplinary Committee in existence under the principal Act immediately before the commencement of this Act, shall continue to function until re-established and composed in accordance with that Act as amended by this Act.