

EXPLANATORY NOTES

Regulation of Legal Services (Scotland) Act 2025 (asp 8)

£16.30

REGULATION OF LEGAL SERVICES (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Regulation of Legal Services (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Overview

3. The Act reforms the regulation of legal services. It introduces measures that allow for more competition and innovation in the regulation and provision of legal services. It also helps to ensure that the regulation of legal services is carried out independently from other activities.

4. Existing regulatory bodies retain their regulatory functions but with a requirement for these functions to be performed independently from other functions (such as representing the interests of the body's members). New bodies can also apply to regulate the provision of legal services.

5. New arrangements are put in place for the regulation of legal businesses (which are distinct from the frameworks for regulating individual members of the legal profession). In addition, some restrictions on how legal businesses may be structured are removed. The Act also creates new offences relating to pretending to be a regulated provider of legal services, and it modifies the arrangements for dealing with complaints connected with the provision of legal services.

6. **Part 1** deals with the overarching regulatory framework and has three Chapters—

- Chapter 1 looks at the objectives of regulating legal services, the professional principles and other overarching material,
- Chapter 2 sets rules for all regulators of legal services. In doing so, it divides regulators into two categories and imposes different conditions based on the category to which a regulator is assigned,

- Chapter 3 provides for new regulators to enter the market and their members to acquire rights to provide legal services. While much of this is a restatement of material from the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, the rights to provide legal services are broader.

7. **Part 2** introduces a requirement for category 1 regulators (at present just the Law Society of Scotland) to create and apply a set of rules for the regulation of legal services at a business level (for example, to require traditional firms of solicitors etc. to be regulated as firms as opposed to as a collection of solicitors).

8. **Part 3** relates to the Scottish Legal Complaints Commission and adjusts its powers and provides for an updated complaints regime.

9. **Part 4** makes provision in relation to a range of other matters, including—

- changing the ownership requirements for licensed legal services providers (sometimes referred to as alternative business structures) which don't have to be wholly owned by solicitors and adjusting the restrictions on their businesses,
- removing certain practising restrictions for charities and third sector organisations,
- creating a range of offences in connection with people pretending to be regulated providers of legal services or using particular titles etc. that would infer that they are regulated in a certain way,
- conferring power on the Scottish Ministers to require more (or fewer) legal services to be provided only by regulated persons,
- making provision in relation to safeguarding the interests of clients.

10. **Part 5** deals with a number of general matters.

Index of expressions used in these notes

11. In these notes, the following expressions are used—

- "1980 Act" means the Solicitors (Scotland) Act 1980,
- "1990 Act" means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
- "2007 Act" means the Legal Profession and Legal Aid (Scotland) Act 2007,
- "2010 Act" means the Legal Services (Scotland) Act 2010,
- "the Act" means the Regulation of Legal Services (Scotland) Act 2025,
- "the Commission" means the Scottish Legal Complaints Commission,
- "the Council" means the Council of the Law Society,
- "the Faculty" means the Faculty of Advocates,

- "the Guarantee Fund" means the Scottish Solicitors Guarantee Fund as established by section 43 of the 1980 Act,
- "the Law Society" means the Law Society of Scotland,
- "legal services provider" is defined in section 5 of the Act (see also paragraphs 33 to 36 below),
- "licensed legal services provider" (and "licensed provider") are forms of legal business which are not wholly owned by solicitors. See Part 2 of the 2010 Act,
- "the Lord President" means the Lord President of the Court of Session.

BACKGROUND

The existing regulators

12. The Lord President has a general supervisory role in respect of the regulation of legal services in Scotland. In addition, the Lord President has a variety of statutory responsibilities in connection with, among other things, the creation of rules for legal professionals and the admission of new regulators.

13. The Law Society is the primary regulator of legal services in Scotland, with responsibility for regulating solicitors, notaries public, conveyancing and executry services, registered foreign lawyers and some powers to regulate incorporated practices. The Law Society has also been approved to regulate licensed legal services providers (being an alternative business structure) though this system is not yet operational (as at the date of Royal Assent to this Act). The Law Society is a statutory body (originally established in 1949) and its constitution and functions are now contained in the 1980 Act.

14. In general terms, the 1980 Act sets out the functions of the Law Society in relation to promoting the interests of the solicitors' profession and the public in relation to that profession. The functions include oversight of the admission of solicitors to the profession, keeping of the roll of solicitors and responsibility for producing rules as to professional practice, conduct and discipline. It also puts in place a number of safeguards designed to protect the clients of solicitors, such as the maintenance of the Client Protection Fund and requirements in relation to professional indemnity insurance.

15. The Faculty is the regulator for advocates. It performs this function on behalf of the Court of Session which holds ultimate responsibility for the admission of persons to the office of advocate and for regulating the professional practice, conduct and discipline of advocates.

16. Section 120 of the 2010 Act made this a statutory responsibility, though the Faculty has been regulating its members for much longer than that. The Lord President also has a statutory role in relation to the admission and regulation of advocates which is also set out in the same section.

17. The Association of Construction Attorneys (known as the Association of Commercial Attorneys before 17 July 2023) is a body which acquired rights to conduct litigation and rights of audience for its members under the 1990 Act. It is the only body to have done so.

PART 1 – REGULATORY FRAMEWORK

18. This Part sets out the new regulatory framework for the regulation of legal services. In doing so, the framework brings together several existing pieces of legal regulation, categorises regulators and imposes a set of requirements that will apply to those regulators according to the category into which they are assigned.

19. Part 1 of schedule 1 of the Act contains a range of amendments to the 1980 Act to adjust the constitution and functions of the Law Society to reflect that it is assigned as a category 1 regulator. However, it is necessary to read both the Act and the 1980 Act to get the full picture as to the Law Society's obligations.

Chapter 1 – Objectives, principles and key expressions

20. This Chapter sets out the objectives of legal services regulation and the professional principles to which persons providing legal services should adhere. It also deals with how these can be amended. It also defines legal services and other key expressions used in the Part.

Overview of Part

Section 1 – Overview of the regulatory framework

21. This section gives an overview of the provisions in Part 1 to help readers navigate them and understand the framework more readily.

Regulatory objectives

Sections 2 and 3 – The regulatory objectives and their application

22. Section 2 sets out the objectives of the regulation of legal services. These are referred to as "the regulatory objectives" throughout the Act.

23. The regulatory objectives are a high-level statement of both what the regulation of legal services is to achieve and how it is to be achieved. While section 2 sets out the objectives, section 3 sets out how they are to be applied. The two sections must be read together as section 3 elaborates on several of the concepts that are contained in section 2.

24. While some of the regulatory objectives are the same as those that were originally set in section 1 of the 2010 Act, they have been added to and now incorporate key aspects of the Better Regulation Principles,[1] the Consumer Principles[2] and Human Rights (PANEL) Principles.[3] These can be found in section 2(1)(b) to (d) (as read with section 3(2) to (4)).

25. In general terms, a regulatory authority must exercise its regulatory functions in a way that is compatible with the regulatory objectives and in a way that it considers most appropriate to meet those objectives. Later provisions in the Act deal with what happens where a regulator does not exercise its regulatory functions in such a way.

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[1] These are the principles set out at section 6(3)(a) of the Regulatory Reform (Scotland) Act 2014.
[2] See Consumer principles (scottishlegalcomplaints.org.uk).
[3] See Human Rights Based Approach | Scottish Human Rights Commission.

26. The regulatory authorities to which these objectives apply are set out in section 3(5). These are the Court of Session, the Lord President, the Commission, the Scottish Solicitors' Discipline Tribunal, and category 1 and category 2 regulators (which include those bodies, such as the Law Society and the Faculty that directly regulate legal services providers). It also includes approved regulators of licensed providers under Part 2 of the 2010 Act.

Professional principles

Section 4 – Professional principles

27. This section sets out high-level principles for any person who is providing legal services.

28. The practice rules of authorised legal businesses (see Part 2) must include a rule requiring these entities to adhere to them and section 50 of the 2010 Act requires licensed providers to do so. In addition, the Law Society and the Faculty, as the main regulators of individual legal services providers, will need to promote and maintain adherence by those they regulate with these principles as part of their own regulatory schemes (as this forms part of the regulatory objectives). In each case, non-compliance could have consequences for the legal services provider's continued authorisation to provide legal services.

Meaning of key expressions

Section 5 – Meaning of "legal services" and "legal services provider"

29. This section defines, for the purposes of the Act, what is meant by the expressions "legal services" and "legal services providers".

30. The definition of legal services is intended to be broad and describes a range of legal activities, many of which are capable of being provided by people or bodies who are not qualified as solicitors or advocates (section 32 of the 1980 Act limits the drawing or preparation of certain documents to solicitors and other legal professionals). The definition is the same as that used in the 2010 Act.

31. For the purposes of the Act, a legal services provider is defined as being a person or body that provides legal services (whether or not directly to the public and whether or not those services are regulated). This therefore includes solicitors and advocates as well as in-house lawyers, paralegals, conveyancing practitioners etc. It also includes bodies providing legal services such as traditional legal partnerships, other forms of legal business and licensed legal services providers.

32. People who provide legal services but are not regulated are also covered by this definition. This therefore extends the scope of legal regulation beyond the traditional practitioners. This is particularly relevant in the context of services complaints, but it is also important for the changes made in respect of new regulators of legal services where it provides a route for people other than solicitors and advocates to provide regulated legal services.

Section 6 – Meaning of regulatory functions

33. This section defines, for the purposes of the Act, what is meant by a reference to the regulatory functions of a regulatory authority. This definition is used in several places in the Act and is of particular importance in situations where an organisation, such as the Law

Society, has both regulatory and representative functions. In those circumstances, the Act requires the organisation to discharge its regulatory functions independently of its representative ones and put in place appropriate structures to support that.

Chapter 2 – Regulators

34. This Chapter provides for two new categories of regulator for the regulation of legal services providers and assigns the existing regulators to those categories. The use of the categories allows for the creation of an overarching regulatory framework into which the existing (and future) regulators may be allocated and therefore become subject to the same requirements. Category 1 regulators are intended to be those with a significant membership or whose members provide largely consumer-facing services. Category 2 regulators are intended to be those whose membership is more specialist in nature in terms of the legal work undertaken and whose membership is comparably smaller in number.

35. Thereafter the Chapter sets out the requirements that must be met by each category of regulator. It is worth noting though, that the regime for licensed legal services providers is separate and governed by the 2010 Act.[4] This is due to the extra considerations arising from non-legally qualified investors being involved in those businesses (for example, a licensed provider may be a company owned by a solicitor and an investor who is a member of another regulated profession, such as an accountant). This is made clear in section 7 (discussed further below).

36. However, a category 1 or category 2 regulator may also be an approved regulator of licensed providers. The Law Society has been approved to regulate licensed providers and will be subject to both the provisions of the Act as a category 1 regulator in relation to solicitors and their firms etc. and an approved regulator under Part 2 of the 2010 Act in relation to licensed providers.

Regulatory categories

Section 7 – Regulatory categories

37. This section provides for—

- two categories of regulator (category 1 and category 2) for the regulation of legal services providers (the requirements imposed on category 1 regulators are more onerous and reflect that they are responsible for legal services providers that typically provide a broad range of legal services directly to the public),
- the regulation of licensed providers to continue under the 2010 Act,
- each of the three existing regulators of legal services to be assigned to a category (and power for them to be reassigned to a different regulatory category in certain circumstances), and

[4] A licensed legal services provider is a business entity which provides legal services for a fee, gain or reward under a licence issued by an approved regulator under the 2010 Act. In order to be eligible to be a licensed provider a body must have within it a practising solicitor (with a valid practising certificate that is free from conditions). For a more detailed explanation of licensed legal services providers, see Chapter 2 of the Explanatory Notes to the 2010 Act (available here: Legal Services (Scotland) Act 2010 – Explanatory Notes (legislation.gov.uk)).

- a power to be conferred on the Scottish Ministers to change the category to which a regulator is assigned and to specify the category to which a new regulator is assigned.

38. The three existing regulators of legal services in Scotland are assigned as follows—

- the Law Society is assigned to category 1,
- the Faculty is assigned to category 2,
- the Association of Construction Attorneys is assigned to category 2.

39. Any new regulator that has an application for accreditation approved under Chapter 3 of Part 1 of the Act will be assigned to either category 1 or category 2. The Scottish Ministers must, as soon as reasonably practicable, make the regulations necessary to assign it to a category (as they are required to do under section 28). In the meantime, the new regulator is deemed a category 2 regulator.

40. Subsection (6) sets out the factors that the Scottish Ministers must consider when assigning a regulator to a category. These relate to the type and range of legal services that are to be regulated, whether the services are to be provided directly to the public and how many legal services providers the regulator is likely to regulate. The Act does not specify particular types of legal services, or a number of providers, that will lead to a particular regulator being categorised as a category 1 regulator. However, the bigger the regulator, the more services provided directly to members of the public and the more significant the legal services, the more likely it is that a body will be categorised as a category 1 regulator.

41. The Scottish Ministers can only make regulations, which are subject to the affirmative procedure, under subsection (5)(a) at the request of the Lord President. Before making the request, the Lord President must consult the bodies listed in subsection (9). When making a request to the Scottish Ministers, the Lord President must include a document setting out the reasons for the request and copies of any written representations received in relation to the consultation. After making the request, the Lord President must publish those documents.

Requirements of category 1 regulators

Section 8 – Exercise of regulatory functions

42. This section requires a category 1 regulator to exercise its regulatory functions independently of its other functions or activities, and properly in all respects. This reflects that a body should carry out its regulatory functions separately from its other functions, especially any representative functions it may have, and do so in a manner that is appropriate for a regulator. The regulatory functions are instructive here as they point to what regulation is for and how regulators are to carry out that function. Where the regulator has functions other than regulatory functions, it must establish and maintain an independent regulatory committee to discharge its regulatory functions. A regulatory committee may delegate its functions to a sub-committee or an individual, subject to the restrictions in subsection (5) and a sub-committee can, with the approval of the regulatory committee, delegate functions to an individual (except the function described in section 8(5)(a)(ii)) (see section 11). It must also ensure that its

governing body does not interfere with the committee's discharge of these functions. The regulatory committee of a category 1 regulator must also maintain and publish a document setting out the matters in subsection (6) and must consult the governing body of the regulator before making any material changes to one of these matters, its governance arrangements.

Section 9 – Regulatory committee: composition and membership

43. This section sets out the requirements that apply in relation to the composition of a regulatory committee of a category 1 regulator. At least 50% of the members (including of any sub-committee) must be lay members. A person cannot be a member if the person is, or has been for at least two years, involved in the governing body of the regulator or the exercise of the regulator's non-regulatory functions. Nor can a person be a member if the person's right to practise has been removed as a result of a finding of misconduct by a professional or disciplinary body or the person is otherwise suspended from practising (in law or otherwise) by such a body, or if the person has been convicted of an offence involving dishonesty, or if the person has been convicted of an offence other than an offence of dishonesty, and the regulatory committee has determined that they may not be a member.

44. While it is generally for a regulatory committee to appoint its members, there may be situations where a regulatory committee is unable to do so and, in those circumstances, the regulator may appoint members to its regulatory committee. The Act gives the most obvious example of appointing the first members of the regulatory committee (as they could not appoint themselves). However, after that point, it covers the unlikely event that the regulatory committee isn't quorate or able to appoint new members for some other reason. The regulatory committee may co-opt persons who are not members of the committee. The validity of the committee proceedings is not affected by a vacancy in its membership.

45. Subsection (10) requires a category 1 regulator to publish guidance (most likely prepared or updated by the committee itself) about how it applies subsection (4) (as read with subsection (6)). This is to enable it to provide more details about the specific bodies it regards as being relevant.

Section 10 – Regulatory committee: lay and legal members

46. This section sets out the criteria which must be satisfied if a person is to be appointed as a lay member or a legal member of the regulatory committee of a category 1 regulator. A lay member is a person who is not eligible for appointment as a legal member and must not have been so eligible for at least 10 years. They must also be qualified to represent the interests of the public in relation to the provision of legal services in Scotland or be otherwise suitable with regard to the operation of regulatory functions, for example, an expert in consumer issues.

47. Subsection (4) sets out who qualifies as a legal member. In subsection (4)(a), the reference to a person training to become a solicitor means a trainee solicitor and in subsection (4)(b) the reference to a person having matriculated as an intrant means a person (often referred to as a "devil") undergoing training by the Faculty to be admitted to the office of advocate. Conveyancing and executry practitioners are persons who are not solicitors but have met the requirements to be registered in the appropriate register maintained by the Law Society and are therefore entitled to provide services in connection with conveyancing or executries.

Section 11 – Regulatory committee: convener, sub-committees and minutes

48. This section sets out the arrangements for appointing a convener of the regulatory committee of a category 1 regulator and for otherwise chairing its meetings and any sub-committee. It also requires a copy of the minutes of a meeting of the regulatory committee to be provided on request.

Section 12 – Annual reports of category 1 regulators

49. This section requires a category 1 regulator (or, where it has non-regulatory functions, its regulatory committee) to prepare an annual report on the exercise of its regulatory functions. Subsection (2) sets out a range of material that must be contained in the report including information relating to compliance with the regulatory objectives, strategic priorities, accounts, payments from its compensation fund, the number of conduct and regulatory complaints remitted to it under the 2007 Act (and the number of those complaints that are determined, discontinued or reinstated by it or its regulatory committee), information about any directions given under section 20 to disapply rules, and details of the steps it has taken in relation to its regulated providers.

50. Where the category 1 regulator has a regulatory committee, the report must contain relevant information about the committee's internal governance arrangements and the relationship between the committee and the regulator's governing body. Subsection (3) places a duty on the regulator to make information available to the committee for the preparation of the report.

51. When preparing an annual report, the regulator or committee (as the case may be) must consult the independent advisory panel of the Commission.[5] A category 1 regulator or its regulatory committee must also publish a copy of the report and send a copy to the Lord President.

Section 13 – Compensation funds

52. This section requires a category 1 regulator to establish and maintain a fund for the purpose of making grants to compensate persons who suffer financial loss by reason of dishonesty by a legal services provider regulated by the regulator (or a provider it regulated at the time the dishonesty occurred). If the regulator has non-regulatory functions, the fund must be under the management and control of its regulatory committee including in respect of decisions about making payments from the fund. The regulator or the committee (as the case may be) must have rules which, among other things—

- require contributions from the legal services providers that are being regulated,
- specify the criteria for making a grant from the fund, and
- state the minimum amount of money to be kept in the fund.

53. The Scottish Ministers (only at the request of the Lord President, the category 1 regulator, or the independent advisory panel of the Commission) may by regulations make further provision in connection with funds established under this section and the rules that the regulator or the committee must have for them. The regulations are subject to the affirmative

[5] The independent advisory panel of the Commission operates under the name of the "Consumer Panel". The Act and these notes, however, refer to it by its description in paragraph 11A of schedule 1 of the 2007 Act.

procedure. Before making a request, the requestor must consult each category 1 regulator or, if applicable, its regulatory committee and the independent advisory panel of the Commission (but such a body need not be consulted if the body is the requester). The requester must also consult such other person or body as the requester considers appropriate. The Lord President must also agree to the making of the request (unless the requester is the Lord President). Subsections (12) and (13) set out the documents required when seeking the Lord President's agreement and when making a request to the Scottish Ministers. As soon as practicable after the request is made, the requester must publish those documents.

Requirements of category 2 regulators

Section 14 – Exercise of regulatory functions

54. This section requires a category 2 regulator to exercise its regulatory functions independently of its other functions or activities, and properly in all respects. The regulator's internal governance arrangements must include provision with a view to ensuring that it—

- always exercises its regulatory functions in this way,
- allocates sufficient resources to the exercise of these functions, and
- regularly reviews how effectively it is exercising them.

55. This is less prescriptive than the requirements imposed on a category 1 regulator which must set-up a regulatory committee to discharge its regulatory functions.

Section 15 – Annual reports of category 2 regulator

56. This section requires a category 2 regulator to prepare an annual report on the exercise of its regulatory functions. Subsection (2) sets out a range of material that must be contained in the report including information relating to compliance with the regulatory objectives, strategic priorities, costs, details of the steps it has taken in relation to its regulated providers, information about directions given under section 20, details of how a regulator has complied with a direction in relation to the handling of complaints and of steps taken by a regulator to ensure compliance with any measures taken under section 19, and a statement indicating whether the regulator considers that the category to which it has been assigned is appropriate. When preparing an annual report, a category 2 regulatory must consult the independent advisory panel of the Commission. Each report must be published by the regulator and a copy sent to the Lord President.

Requirements of both category 1 and category 2 regulators

Section 16 – Register of regulated legal services providers

57. This section requires each category 1 and category 2 regulator to establish and maintain a register of the legal services providers that it regulates which are authorised to provide legal services. Subsection (8) makes it clear that a solicitor holding a practising certificate is authorised to provide legal services and must be registered, as must a practising advocate and an authorised legal business. It would likewise apply in a similar manner to a member of the Association of Construction Attorneys or a person who is regulated by an accredited regulator (see Chapter 3 of Part 1).

58. The register must contain information in relation to each legal services provider who is an individual, such as their name, the address of their place of business and details of any sanctions resulting from disciplinary action taken against them in the last 3 years. The register must also contain the same information relating to each legal services provider that is not an individual.

59. The register must also contain the details of any person or body that it regulates who is not authorised to provide legal services but would be entitled to be authorised to do so and wishes to appear in the register. A person who is suspended or disqualified from practice is not entitled to be authorised and the register should not therefore include such a person. Similarly, if a legal services provider's authorisation to provide legal services is suspended, the corresponding entry in the register should be removed for the duration of the suspension. But if, for example, a solicitor chooses not to renew their practising certificate for a period of time and wishes to remain registered, the Law Society must include their details in its register (the roll of solicitors). Similarly, an advocate who works in-house or becomes a judge often chooses to become a non-practising member of the Faculty. If a regulator considers it appropriate, the register may contain such other information relating to any person or body it regulates.

60. Members of the public must have free access to the register and be able to search it. The requirement for it to be made available by such electronic means as the regulator considers appropriate is most likely to be satisfied by the regulator putting the register on its website. However, it is possible that it may use some other means such as an app to achieve that outcome.

61. The roll of solicitors kept by the Law Society under section 7 of the 1980 Act is expected to be the register for the purposes of this section. The Faculty also maintain a website showing practising and non-practising members.

Section 17 – Professional indemnity insurance

62. This section requires each category 1 and category 2 regulator to have rules concerning indemnity for the legal services providers it regulates against any kind of professional liability. A failure to comply with them may be treated as professional misconduct or unsatisfactory professional conduct. The Lord President must agree to the making of them and any amendments. While regulators are afforded some discretion in relation to how this is achieved, it ensures that insurance is in place to cover situations where the actions of a legal services provider results in a client suffering loss or damage.

Powers of the Lord President in relation to regulators

Section 18 – Review of regulatory performance by the Lord President

63. This section allows the Lord President to review the performance of a category 1 or category 2 regulator on the Lord President's own initiative or if requested to do so by the Scottish Parliament, the independent advisory panel of the Committee or Consumer Scotland. A request may be made only where the requesting body is concerned that the regulator is failing to exercise its regulatory functions in a manner that is compatible with the regulatory objectives or failing to comply with the requirements imposed on the regulator under the Act or any other enactment. The requester must give notice to the regulator of its reasons for proposing to make the request.

64. When a review is being carried out it is to be done with a focus on, but not limited to, the regulator's compliance with the regulatory objectives, the exercise of its regulatory functions, the operation of its regulatory committee (where relevant) or other internal governance arrangements and its compliance with any measures applied to it under section 19 of the Act or any direction from the Commission under the 2007 Act.

65. The Lord President may request information from a regulator in connection with an existing review relating to that regulator. If the regulator fails to provide the information, the Lord President may add such failure to the existing review (but the regulator must be given a chance to respond to this). If the Lord President thinks that any person other than a regulator holds information relating to the review, the Lord President may request the information from them (see subsection (9)). When conducting the review, the Lord President may consult such persons or bodies as they consider appropriate.

66. Following any such review, the Lord President must prepare and publish a report detailing the findings and any measures the Lord President intends to take under section 19. If a request is received and the Lord President decides not to conduct a review, the Lord President must give the requester the reasons for that, in writing.

Section 19 – Measures open to the Lord President

67. This section allows the Lord President to take specified measures (see subsection (4)) in relation to a category 1 or category 2 regulator. The Scottish Ministers may by regulations (subject to the affirmative procedure) specify other measures that may be taken by the Lord President and make further provision about the measures that the Lord President may take. This may involve a completely new form of sanction or action or adjusting an existing measure, perhaps by adding further procedural requirements.

68. The Scottish Ministers can only exercise the regulation-making power following a request from the Lord President to do so. Before making a request, the Lord President must consult with each category 1 and category 2 regulator, the independent advisory panel of the Commission, and any other appropriate persons or bodies. A request must include the reasons for making the request and copies of representations received during the consultation period. In addition, the Lord President must publish those documents.

Special rule changes

Section 20 – Power to direct special rule changes

69. This section allows a regulator, on the application of a legal services provider that it regulates, to disapply or modify any rule of the regulator in relation to the applicant. The regulator makes this change by giving a direction, but only if the direction is compatible with the regulatory objectives.

70. But a direction cannot disapply or modify a requirement under the Act or any other enactment. In addition, a direction may be given only if the regulator considers it—

- desirable for the purpose of enabling a new or alternative way of providing or regulating legal services to be piloted ("the first purpose"),

- reasonable and proportionate for the purpose of avoiding a regulatory conflict, removing an unnecessary rule, or making a rule less onerous ("the second purpose"), or
- necessary or appropriate in the circumstances.

71. A direction has effect either indefinitely or for the period of time it specifies or until it is revoked. A copy of a direction must be given to the legal services provider to whom it relates and, in circumstances specified in subsection (7), to the Lord President.

72. A regulator must exercise this power of direction in accordance with section 3(1). This is because the power is a regulatory function of a regulator. The power must therefore be exercised in a manner which is compatible with the regulatory objectives in section 2(1) and in a manner which the regulator considers most appropriate to meet those objectives.

Section 21 – Powers to amend or revoke directions

73. This section allows a regulator to amend or revoke a direction given by it under section 20. But it can only amend a direction on the application of the legal services provider to whom it relates. The Lord President may also revoke a direction given for the first purpose under section 20(3)(a) at any time.

Section 22 – Register of directions

74. This section requires a regulator to establish and maintain a register of directions given by it under section 20 that are still in force. The register must contain a copy of the direction and any amendments made to it. It must also specify the day when each direction ceases to have effect or whether the direction is to have effect for an indefinite period. A regulator must withhold information from any document to be contained in the register if satisfied that its disclosure would, or would be likely to, breach data protection legislation. The regulator may also withhold information if satisfied that its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person or breach an obligation of confidence owed by any person.

Chapter 3 – New regulators of legal services

75. This Chapter makes provision for new regulators of legal services. It replaces similar provisions that were contained in sections 25 to 29, section 42 and schedule 2 of the 1990 Act which enabled persons to obtain rights to conduct litigation and rights of audience.

Applications

Section 23 – Right to provide legal services

76. This section allows a body to apply to the Lord President for the purpose of enabling the body to become accredited to authorise persons to acquire the right to exercise any or all of the following (as well as the regulation of those persons' exercise of acquired rights)—

- rights to conduct litigation on behalf of members of the public,
- rights of audience in courts,
- the right to provide other types of legal service or services.

77. Only natural persons may acquire rights to conduct litigation or rights of audience. This means companies and other bodies which have legal personality cannot apply for authorisation for these rights.

78. The application must include, in particular, a draft regulatory scheme.

Section 24 – Regulatory scheme

79. This section sets out that a draft regulatory scheme under section 23 must—

- specify the rights and legal services that it proposes persons authorised by the body may acquire,
- contain the body's proposed authorisation rules, practice rules, and (if applicable) its rules for authorising and regulating legal businesses for the purposes of Part 2,
- set out how the body will exercise its regulatory functions compatibly with the regulatory objectives,
- set out the regulatory category to which the body thinks it should be assigned, and
- deal with such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as the regulations may specify).

80. It also states what authorisation rules and practice rules are about, and what they must include. Where relevant, such as in the case of professional indemnity, these rules will have to take account of the requirements that will apply to the body depending on whether it is assigned as a category 1 or category 2 regulator.

81. The authorisation rules will set out the requirements an applicant must meet in order to become a provider that is regulated by the body and the process for seeking that authorisation. This may include granting authorisation subject to conditions (such as restricting the types of, or manner in which, services are to be provided) and how decisions can be reviewed. In particular, the authorisation rules must contain a rule that only fit and proper persons may be authorised and that the authorisation is to be withdrawn if any such person is not complying with the general regulatory scheme or other pertinent rules of professional practice.

82. The practice rules will cover the standards to be met by authorised persons when providing legal services as well as requirements in relation to accounting, auditing and professional indemnity. Practice rules will also set out how complaints are to be handled and the consequences for where there is a breach of the regulatory scheme that doesn't merit the withdrawal of authorisation. This might, for example, be in the form of fines or being required to take remedial action within a set period. Subsection (8) sets out some particular rules that are required in respect of the exercise of rights of audience. These reflect the requirements imposed on other officers of the court (such as solicitors and advocates).

83. The practice rules must also contain a requirement to publish decisions in relation to conduct complaints about professional misconduct that have been referred to the Commission.

Section 25 – Regulatory scheme – additional matters to be included: further provision

84. This section provides that the Scottish Ministers can only exercise the power under section 24(1) if they have received a request to do so from the Lord President, an accredited regulator or the independent advisory panel of the Commission following a period of consultation with specified bodies. Except where the Lord President is the requester, the Lord President's agreement must be obtained. The section specifies what information must be provided to the Lord President and the Scottish Ministers and what documents must be published.

Section 26 – Publication of draft regulatory scheme and representations

85. This section requires an applicant under section 23 to advertise the draft regulatory scheme included in its application. The applicant is required to send a copy of the draft regulatory scheme to the Competition and Markets Authority, the Commission and the independent advisory panel of the Commission seeking representations. The applicant must also make the scheme available electronically for a period of six weeks beginning with the date on which the application was made. During this period, any person may make written representations to the Lord President.

Consideration and grant

Section 27 – Consideration of applications

86. This section sets out how applications under section 23 are to be considered by the Lord President. It requires the Lord President to consider an application submitted under section 23(1) and any written representations made in accordance with section 26(3) and (4).

87. The application may not be considered if the Lord President is not satisfied that the requirements of section 26 have been, and are being, complied with. The Lord President may make preliminary observations and, if the scheme is adjusted in response, must consider the adjusted scheme. The Lord President must have regard to whether the scheme would achieve and maintain appropriate standards of conduct and practice by persons who may acquire the rights sought, and must also consult the Scottish Ministers, the Competition and Markets Authority, the independent advisory panel of the Commission and such other persons as the Lord President considers appropriate.

Section 28 – Approval of application and giving effect to the regulatory scheme

88. This section provides that if the Lord President is satisfied with a draft regulatory scheme included in an application under section 23 (having considered it in accordance with section 27), the Lord President must approve the application. If the Lord President is not satisfied, the Lord President must refuse it. The Lord President must publish notification of the decision and must include a summary of the reasons for the decision.

89. If the application is approved by the Lord President, the Scottish Ministers must lay before the Scottish Parliament draft regulations to assign the applicant as a category 1 or category 2 regulator. If the application is approved, the body must give effect to the draft regulatory scheme (and apply it as its regulatory scheme) and publish it. A body which has had its application (and regulatory scheme) approved under this section is referred to as an accredited regulator.

Exercise of the acquired rights

Section 29 – Exercise of rights to provide legal services

90. This section provides that where an accredited regulator has given effect to a draft regulatory scheme and applied it as its regulatory scheme under section 28(7), a legal services provider may be authorised by the regulator to exercise the right or rights to provide legal services specified and described in the scheme. To be authorised, a provider will (among other things) require to be a fit and proper person (see section 24(4)). It also makes provision in connection with, among other things, the exercise of a right of audience.

91. In practical terms, this means that a person who wishes to provide legal services that are regulated by an accredited regulator can apply to the regulator for authorisation to provide those services. This is distinct from persons who wish to be solicitors or advocates and is more likely to relate to specialist areas, for example commercial or employment law.

92. Subsections (3) and (5) to (7) deal with particular rights that arise where the rights being exercised relate to court practice. Subsection (3) preserves the inherent jurisdiction of the court to hear or refuse to hear any person (though it must give reasons if it refuses to do so). Subsection (5) obliges a person with a right of audience to prioritise work before the court over other business and subsections (6) and (7) provide the same protections to an authorised provider in relation to the conduct of litigation as exists for officers of the court.

Section 30 – Surrender of rights

93. This section allows an accredited regulator to apply to the Lord President to surrender some or all of the rights acquired (for example, if they no longer have a sufficient number of providers to make the running of the body feasible). Subsection (2) requires the accredited regulator to first consult each of the body's authorised providers of legal services (and the application to the Lord President must include copies of any representations received). The Lord President must consult persons or bodies considered appropriate on the application.

94. The Lord President may give directions as to the requirements which a body wishing to surrender any such rights will have to comply with. Where the Lord President grants the application, the Lord President is to give notice to the regulator specifying the date on which it takes effect and publish that notice (see subsection (10)). From the date specified in the notice, persons authorised by the body may not exercise the right.

95. However, where the application is seeking to surrender all of the regulator's acquired rights, the consultation under subsection (2) must seek the views of the body's authorised providers about whether a majority of the providers would like another regulator to authorise them to exercise and regulate their rights or whether they would like to form a body and submit an application under section 23 to seek accreditation to authorise them to exercise and regulate their acquired rights. If the majority of consulted providers have expressed a preference of either of these outcomes, the notice from the Lord President under subsection (10) may give effect to this.

Section 31 – Offence of pretending to have acquired rights

96. This section provides for an offence of pretending to have acquired rights. In this section, an "acquired right" means the right or rights to provide legal services specified and described in a regulatory scheme given effect to under section 28. A person who commits the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500) (as at the date of Royal Assent to this Act).

Review of regulatory scheme

Sections 32 – Review of regulatory scheme on initiative of accredited regulator

97. This section provides that, where an accredited regulator has reviewed its regulatory scheme under its own initiative and proposes such revision to its scheme as it considers appropriate, it must provide a report for the Lord President's consideration to agree any changes. The provision gives the Lord President the power to approve or not approve the proposed revision or to direct the accredited regulator to revise the scheme.

Section 33 – Review of regulatory schemes

98. This section allows the Lord President to direct an accredited regulator to carry out a review of its regulatory scheme and report on the review including any proposed revisions to its regulatory scheme. If the Lord President is satisfied with a body's proposed revisions, the Lord President must approve the revised scheme and direct the regulator to apply the revised scheme. If the Lord President considers that other revisions are required, the Lord President may direct the regulator to apply these other revisions or may make comments in relation to the proposed revisions and direct the regulator to take account of the comments. Following the revision of its regulatory scheme, an accredited regulator must publish is revised scheme. The Lord President may vary or revoke a direction made under this provision.

Section 34 – Revocation of acquired rights

99. This section allows the Lord President to revoke the approval of an application under section 28 where it appears to the Lord President that the body that made the application has failed to comply with a direction under section 32 or 33. Before revoking an approval, the Lord President must consult each person who is authorised by the accredited regulator to provide legal services and must ask whether those providers would like another category 1 or category 2 regulator to authorise them to exercise their acquired rights (and to so regulate their exercise of those rights), or whether they wish to form a body and submit an application under section 23 seeking accreditation.

Miscellaneous

Section 35 – Replacement regulatory arrangements for authorised providers

100. This section places a duty on the Lord President, where an accredited regulator is a discontinuing regulator (i.e. it is one where it has ceased to function by surrendering its rights under section 30 or has had its rights revoked under section 34) to consult each authorised provider to determine in particular whether a majority of the authorised providers would like another regulator to authorise them to exercise their acquired rights and regulate the exercise of such rights. If the majority is in favour of another regulator authorising and regulating the authorised providers, the Lord President can, in certain cases, amend the regulatory functions

of the receiving regulator to enable it to regulate the authorised providers of the discontinuing regulator. In other cases, the Lord President can ask the Scottish Ministers to make regulations (subject to the affirmative procedure) to amend the functions of the receiving regulator.

Section 36 – Consequential amendments and repeals

101. This section amends and repeals provisions of the 1990 Act in consequence of other provisions of this Chapter.

Section 37 – Transitional and saving provision for regulators approved under the 1990 Act

102. This section makes transitional and saving provision for regulators approved under the 1990 Act. In particular, it provides for the review and updating of the regulatory scheme of any body that is approved under that Act and before Chapter 3 of Part 1 of the Act comes into force and also provides a way for those bodies to surrender their acquired rights or have them revoked.

PART 2 – REGULATION OF LEGAL BUSINESSES

103. This Part makes provision for category 1 regulators to authorise legal businesses to provide legal services.

Introductory

Section 38 – Overview of Part

104. This section gives an overview of the provisions in Part 2 to help readers navigate them.

Requirement to be authorised to provide legal services

Section 39 – Requirement for legal businesses to be authorised to provide legal services

105. This section defines what constitutes a legal business (and associated expressions) for the purpose of Part 2. It also makes it an offence for a person to own or operate a legal business which provides legal services to the public for fee, gain or reward without that business being authorised in accordance with this Part. A person who commits an offence under this section is liable on summary conviction to a fine not exceeding £20,000. The Scottish Ministers may by regulations substitute a different sum. Before making regulations, the Scottish Ministers must consult each category 1 regulator and other persons or bodies they consider appropriate and must publish the consultation responses. Those regulations are subject to the negative procedure.

106. A legal business is any business entity that provides (or offers to provide) legal services to the public for fee, gain or reward that is either wholly owned by a solicitor or solicitors, a qualifying individual or qualifying individuals, or a solicitor (or solicitors) and a qualifying individual (or individuals). Qualifying individuals are other persons who are regulated by a category 1 regulator and include registered foreign lawyers ("RFLs") and registered European lawyers ("RELs") defined in, and registered and regulated under, the 1980 Act. Under that Act, RFLs can own and operate a business known as a multi-national practice (as defined in the 1980 Act) but only where the owners of the business also include solicitors qualified to practise in Scotland.

107. Accordingly, a legal business may include sole traders, partnerships and corporate bodies, including those which are regulated as incorporated practices under the 1980 Act. A licensed legal services provider under the 2010 Act is not a legal business for these purposes as it can be owned by persons who are neither solicitors nor, as the case may be, qualifying individuals. Law centres and charities which provide legal services and other forms of charitable or third sector providers are also not included as they do not offer their services for fee, gain or reward.

108. In the event of a new regulator coming to the market, or an existing category 2 regulator being reassigned as a category 1 regulator, the offence will not bite until such time as the regulator is confirmed as a category 1 regulator and the persons that it regulates are regulated as such. Appropriate transitional processes will be put in place to ensure that any businesses that will become legal businesses under such a regime will have time to acquire authorisation before the regulator is formally assigned to category 1. Authorised legal businesses that already exist at the time the section comes into force are automatically treated as being authorised in accordance with this Part.

Section 40 – Offence of pretending to be an authorised legal business

109. This section makes it an offence for a person to, without reasonable excuse—

- take or use any name, title, addition or description implying that the person is an authorised legal business, or
- otherwise pretend to be an authorised legal business.

110. A person who commits an offence under this section is liable on summary conviction to a fine not exceeding £20,000. The Scottish Ministers may by regulations substitute a different sum. Before making regulations, the Scottish Ministers must consult each category 1 regulator and other persons or bodies considered appropriate and must also publish any responses to the consultation. Those regulations are subject to the negative procedure.

Regulation of authorised legal businesses

Section 41 – Rules for authorised legal business

111. This section requires a category 1 regulator to prepare and operate a set of rules to authorise and regulate legal businesses. For the purposes of the Act they are called, collectively, the ALB rules. The ALB rules may relate to one or more types of legal business, and some or all legal services. They must contain authorisation rules and practice rules, include provision for reconciling different sets of regulatory rules, and deal with such other matters as the Scottish Ministers may by regulations specify (but only if requested to do so by the Lord President, a category 1 regulator or the independent advisory panel of the Commission). Before making a request, the requestor must first consult each category 1 regulator, the independent advisory panel of the Commission and other persons considered appropriate) and, except where the requester is the Lord President, secure the Lord President's agreement to the making of the request. Subsections (10) to (12) set out the documents that must accompany a request and that they must be published.

112. A regulator may amend its ALB rules with the prior approval of the Lord President. Where a regulator is making its ALB rules or making a material amendment to those rules, it must consult its members, the Competition and Markets Authority, the Commission, the independent advisory panel of the Commission, Consumer Scotland and any other persons or bodies considered appropriate.

Section 42 – Authorisation rules

113. This section sets out what authorisation rules under section 41 are generally to make provision about and sets out some particular matters that they must include (such as grounds for suspension or withdrawal of authorisation where the provider is breaching the regulatory scheme[6] of the regulator). For the purposes of Part 2, a legal business that is authorised under any such rules is referred to as an authorised legal business.

Section 43 – Appeals in relation to authorisation decisions

114. This section allows for appeals to a sheriff against a decision taken under authorisation rules (made in pursuance of Part 2) to—

- refuse an application for authorisation of a legal business,
- impose, vary or revoke conditions or restrictions in relation to its authorisation (for example, which may limit the services that can be provided in some way), or
- suspend or withdraw its authorisation.

115. An appeal may be made by an applicant for authorisation, or by a legal business that has been authorised, under any such rules.

Section 44 – Practice rules

116. This section states what practice rules under section 41 are about and sets out some particular matters that they must include, such as the operation and administration of authorised legal businesses, the standards they must meet and operational positions within them. The practice rules must also include rules on accounting and auditing, professional indemnity and the making and handling of complaints. They must set out the measures that a category 1 regulator may take where an authorised legal business has breached the regulatory scheme or a complaint against it is upheld.

117. The rules must also require authorised legal businesses to adhere to the professional principles.

Section 45 – Financial sanctions

118. This section allows practice rules under section 44 to provide for the imposition of a financial penalty and for its withdrawal where the regulator considers it would not be reasonable to seek (or to continue) to seek payment. It also allows the regulator to recover the reasonable costs incurred in collecting the penalty. The Scottish Ministers may by regulations (subject to the negative procedure) specify the maximum amount, but they can only make such regulations with the agreement of the Lord President. Before making regulations, the Scottish Ministers must consult each category 1 regulator and any other persons or bodies they consider appropriate and publish any representations received.

[6] The regulatory scheme of a regulator may be wider than just its ALB rules.

119. An authorised legal business may appeal to a sheriff against any such financial penalty (or the amount of it).

Section 46 – Reconciling different rules

120. This section sets out what the rules under section 41 must include as regards provision for reconciling different sets of regulatory rules. The Scottish Ministers may by regulations make further provision about such regulatory conflicts (but only if requested to do so by the Lord President, a category 1 regulator or the independent advisory panel of the Commission). Before making a request, the requestor must first consult each category 1 regulator, the independent advisory panel of the Commission and any other persons or bodies it considers appropriate). Except where the Lord President is the requester, the requester must secure the Lord President's agreement to the making of the request, Subsections (8) and (9) set out the documents that must accompany a request, which the requester must publish as soon as practicable after making a request.

121. This section (which should be read with the regulatory objectives) places an obligation on category 1 regulators to minimise duplication or unnecessary difference in the rules it makes. For example, many authorised legal businesses are already regulated by the Law Society as incorporated practices[7] in terms of section 34 of the 1980 Act. While a wider range of legal businesses will now require to be regulated, in making ALB rules, the Law Society will be required to consider how best to avoid duplicating those rules unnecessarily in relation to incorporated practices. To assist them in that regard, section 48 gives the Law Society discretion as to which powers it uses to create the rules in question and schedule 1 adjusts section 34 of the 1980 Act to facilitate that.

Section 47 – Monitoring of performance of authorised legal businesses

122. This section deals with how a category 1 regulator is to monitor and investigate the performance of authorised legal businesses. A category 1 regulator must review the performance of each of its authorised legal businesses as it considers appropriate, or when requested to do so by the Lord President. Following a review, the regulator must prepare a report on its review and send a copy of its report to the authorised legal business to which it relates. If the review was requested, the regulator must also send a copy of its report to the Lord President.

Miscellaneous

Section 48 – Law Society of Scotland

123. This section—

- requires the Law Society to prepare its rules for authorising and regulating legal businesses under section 41 within such period (not exceeding three years) as it may agree with the Lord President, and
- allows the Law Society to use its powers to make rules under the 1980 Act (as amended by Part 2 of schedule 1) to authorise and regulate legal businesses under Part 2.

[7] An incorporated practice is defined in section 34(1A) of the 1980 Act. It relates to bodies corporate (e.g. companies).

124. The Law Society's ALB rules are invalid unless they have the prior approval of the Lord President.

Section 49 – Entities changing regulatory regime

125. This section caters for circumstances in which a licensed legal services provider (under Part 2 of the 2010 Act) becomes an authorised legal business under Part 3 of the Act, and circumstances in which the opposite happens. A body might need to change its regulatory regime in this way if, for example, it changes the way it is owned. By default, the body is deemed to continue to be regulated under the original regime for 90 days, but the new regulator may end the regulatory arrangement earlier than this. This arrangement also ends if the body ceases to be regulated under the new regime (whatever the reason might be). This allows for a smooth regulatory handover from the original regime to the new regime.

PART 3 - COMPLAINTS

126. The Commission was established (under the 2007 Act) in 2008 to provide independent oversight of the handling of complaints about the provision of legal services (or the conduct of legal professionals), and to act as a single gateway for the receipt of all such complaints.

127. This Part of the Act makes changes to the procedure for dealing with complaints under the 2007 Act. As part of this, the Commission's powers are extended so that it can deal with services complaints relating to individuals or bodies who are not regulated by a regulator but who provide legal services to the public for fee, gain or reward.

128. The Commission will continue to oversee the handling of complaints by bodies that regulate the provision of legal services (currently the Law Society, the Faculty and the Association of Construction Attorneys). But the changes made by this Part will allow the Commission to initiate a complaint itself, allow regulators to initiate and investigate certain complaints, and allow a category 1 regulator to investigate a failure by an authorised legal business to comply with a relevant duty or rule (as a "regulatory complaint").

129. The changes made to the 2007 Act by this Part also give the Commission more flexibility to develop a proportionate, risk-based and more responsive approach to dealing with complaints. It confers powers on the Commission to make rules about how a complaint is to be handled depending on how the complaint is categorised. A complaint (or an element of it) will be categorised as either a "services complaint", a "conduct complaint" or a "regulatory complaint". The Commission will have more flexibility around setting the criteria for each category, and for setting out how complaints which involve more than one such category are to be dealt with. Where a complaint is dealt with by a regulator, the Commission will be able to set minimum standards for how this should be done.

130. It will still be for regulators to investigate conduct complaints against members of the legal profession that they regulate, and the Commission will retain its power to investigate a complaint about how a regulator dealt with a conduct complaint (known as a "handling complaint"). The Commission will also be able to investigate how a category 1 regulator dealt with any regulatory complaint about an authorised legal business (which will become an additional type of "handling complaint").

131. Rather than allow appeals to the Court of Session against any decision of the Commission in relation to services complaints, the Commission's decisions will be final (albeit it may be referred to the Commission's review committee). Any such decision would remain

open to judicial review. By contrast, for complaints involving professional conduct, the relevant professional discipline tribunal will retain oversight, and existing routes of appeal remain available. But the powers of the Law Society, the Scottish Solicitors' Discipline Tribunal ("the Tribunal") and the Court of Session under the 1980 Act to award compensation in relation to conduct complaints is removed, as the process is only intended to address poor behaviour.

132. The arrangements by which the legal complaints system is funded by a levy on the legal profession will continue, but this Part ensures that the Commission will be allowed to set different, and more proportionate, levies for individual legal practitioners and legal businesses. In addition, legal services providers who are not regulated by a regulator may choose to be registered in a register to be kept by the Commission (unless the provider is required to apply for registration) and, in that case, they will be liable to pay an annual contribution. In any event, if a services complaint against an unregulated provider is successful, the provider will be liable to pay a complaints contribution to the Commission and the amount of that may be lower to take account of any annual contributions paid by the provider.

133. This Part also deals with some related matters including adjustments to other legislation.

Section 50 – Receipt of complaints: preliminary steps

134. This section amends section 2 of the 2007 Act (receipt of complaints: preliminary steps).

135. Subsection (3)(a) requires the Commission to deal with—

- complaints (i) suggesting that professional services were inadequate where they were provided by a practitioner in connection with a matter instructed by a client or (ii) suggesting that legal services were inadequate where they were provided by a person other than a practitioner to the public for fee, gain or reward (these being types of "services complaint"),
- complaints 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 profession organisation under (or for the purposes of) section 41(1)(a), or (ii) the terms of its authorisation by the relevant professional organisation (these being a type of "regulatory complaint").

136. Subsection (3)(b) makes it clear that a complaint suggesting that legal services provided by a person other than a practitioner (to the public for fee, gain or reward) were inadequate may include a suggestion that the manner in which legal services were provided was inadequate. But if the Commission considers that the provision of legal services was merely incidental to the provision of non-legal services, the complaint is not to be treated as an eligible services complaint that may be considered by the Commission. It also provides that if a complaint is made about a practitioner who is an individual, the section allows the Commission to also, or instead, treat the complaint as if it were made against the practitioner's firm or the practitioner who employs the practitioner against whom the complaint was made ("the employing practitioner").

137. Subsection (3)(c) requires the Commission to determine whether complaints received by it constitute a conduct complaint, a services complaint, a regulatory complaint, or a combination of these categories of complaint. Where a complaint comprises more than one element, it also gives the Commission more flexibility about how to categorise each element. (Complaints were previously required to be divided into either conduct complaints or services complaints, and a single element of a complaint could not be categorised as both a conduct complaint and a services complaint).

138. Subsection (3)(d) ensures that a regulatory complaint may be made by any person. Subsection (3)(e) repeals provisions that are redundant as a result of the other changes.

Section 51 – Complaints initiated by, or continued by, the Commission

139. This section inserts a new section 2A into the 2007 Act. That section gives the Commission the ability to initiate a conduct or regulatory complaint in its own name.

Section 52 – Ineligible or premature complaints

140. This section amends section 4 of the 2007 Act (complaint not made timeously or made prematurely). Subsection (3) ensures that the Commission does not need to take any further action in relation to a complaint referred to in section 2(1) of the 2007 Act that it considers is not an eligible complaint. Rules made by the Commission under section 32 of the Act set out the criteria for this. Subsection (4) ensures that the Commission does not need to take any further action in relation to a complaint referred to in section 2(1) of the 2007 Act that is made prematurely. Subsections (5) and (6) repeal provisions that are redundant as a result of the other changes.

Section 53 – Commission process relating to complaints

141. This section amends the 2007 Act.

142. Subsection (2) amends section 6 (complaint determined to be conduct complaint) to ensure that where a complaint is (or includes an element which is) a conduct complaint, the Commission must send it to the relevant professional organisation to deal with.

143. Subsection (4) amends section 8 (services complaint: local resolution or mediation). The changes ensure that, where the Commission decides that a complaint is wholly or partly a services complaint (i) that has been made prematurely or (ii) in relation to which an insufficient attempt has been made to achieve a negotiated settlement, it may refer the complaint back to try to achieve a negotiated settlement with the complainer. A complaint is made prematurely, within the meaning of section 4(4) of the 2007 Act, where a complainer has not notified the practitioner of the substance of the complaint in question and given the practitioner an opportunity to deal with it or any prior step required under Commission rules (made under section 32(1) of the 2007 Act) has not been taken.

144. Subsection (5) amends section 9 (services complaint: Commission's duty to investigate and determine) to give the Commission discretion to propose a settlement as respects a services complaint. Previously the Commission was obliged to propose a settlement in respect of services complaints where the complainer had been directly affected by the suggested inadequate professional services.

145. The section also repeals various provisions that are no longer needed as a result of other changes. For example, section 7 of the 2007 Act which requires the Commission to give notice of its determination that a complaint is a services complaint or that it is frivolous etc., is no longer needed because rules made under section 32(1) will set out what the notice requirements are, allowing for a more flexible approach to the notice to be given by the Commission.

Section 54 – Commission's duty to investigate and determine services complaints

146. This section amends section 9 of the 2007 Act to allow the Commission to close a complaint where a practitioner accepts a settlement proposed by the Commission, but the complainer does not. The Commission can also decide not to initiate the investigation of a complaint, or to close a complaint, where the complainer has refused a proposed settlement from the practitioner that the Commission considers is fair and reasonable, so long as the Commission is satisfied that the proposed settlement will remain available for acceptance for 28 days after the Commission has decided not to investigate the complaint or decided to close the complaint.

Section 55 – Regulatory complaints against authorised legal businesses

147. This section amends the 2007 Act.

148. Subsection (2) inserts new section 7A (complaint determined to be a regulatory complaint). The new section ensures that where a complaint is (or includes an element that is) a regulatory complaint, the Commission must send it to the relevant professional organisation to deal with. This requirement applies in the circumstances where the Commission has previously determined that a complaint (or an element of it) is a services complaint but, having investigated it, subsequently determines that it is in fact a regulatory complaint.

149. Subsection (3) inserts new section 52A (regulatory complaints: duty of approved regulator to investigate etc.). The new section ensures that, where the Commission sends a regulatory complaint to a relevant professional organisation, the organisation investigates and reports on it. It also enables a relevant professional organisation to discontinue an investigation of a regulatory complaint, or reinstate a discontinued investigation, if it considers that it is in the public interest to do so.

150. New section 52A(5) requires that, following the investigation of a regulatory complaint, the relevant professional organisation must send a written report to the complainer, practitioner and the Commission outlining the facts of the complaint and any action which will be taken.

Section 56 – Services complaint: sanctions

151. This section amends the 2007 Act.

152. Subsection (2) amends section 10 (Commission upholds services complaint) so that a direction made to an employing practitioner under section 10(2)(c) may require action in relation to systems operated by the employing practitioner that affect the provision of legal services generally. This enables the Commission to ensure that action can be taken to fix issues which contribute more generally to services complaints against the employing practitioner, including by improving system-wide procedures or training. The Commission can also give the direction to the practitioner's firm if the practitioner was, at the time when the services were provided, a partner of a firm.

153. Subsection (3) inserts new section 12A (services complaint upheld: failure to refund fees and outlays). The new section applies, in some circumstances, where the Commission requires a practitioner or an employing practitioner to refund an amount of fees or outlays to a client, and the practitioner or employing practitioner fails to do so due to death of the practitioner, or due to the insolvency or involuntary cessation of trade of the business. Where the new section applies, the unpaid amount is treated, for the purposes of the practitioner's or the employing practitioner's professional indemnity insurance, as if it were compensation that the Commission directed be paid to the complainer. This means that the unpaid amount can then be paid from the practitioner's or the employing practitioner's professional insurance up to a maximum of £35,000 (when combined with other compensation under section 10(2)(d) of the 2007 Act).

154. The section makes other amendments as a result of changes elsewhere to the 2007 Act.

Section 57 – Commission decision making and delegation

155. This section amends paragraph 13(2) (delegation of functions) of schedule 1 of the 2007 Act to change some of the restrictions on the delegation of the Commission's functions. For example, the following functions are no longer exercisable only by a review committee (previously a determination committee): determining a services complaint under section 9, determining fees and outlays under section 10, reporting on a services complaint under section 13, or deciding a handling complaint under section 23. Some of the other changes are consequential on removing the Commission's duty to take the preliminary steps mentioned in section 2(4) of the 2007 Act.

156. Paragraph 13(2) of schedule 1 of the 2007 Act is also amended to enable the Commission to delegate a decision under section 2A(1) of the 2007 Act (as inserted by the Act to initiate a complaint, only to either one of its committees or one of the Commission's members, and to allow any member of the Commission to take a decision on the disclosure of information under section 41A (the power for the SLCC to disclose information relating to complaints), where authorised to do so by the Commission.

Section 58 – Commission review committee

157. This section amends the 2007 Act.

158. Subsection (3) inserts new section 20A (applications to review committee). The new section makes provision for certain persons to be able to apply for a review of a decision by the Commission in relation to a complaint mentioned in subsection (3) of the new section. A decision of a review committee is final.

159. The section makes other modifications as a result of the other changes made to the 2007 Act.

Section 59 – Disclosure of information by practitioners etc. to the Commission and relevant professional organisations

160. This section amends sections 17, 37 and 48 of the 2007 Act which confer various powers on either the Commission or relevant professional organisations to obtain documents and information in connection with complaints. It also inserts new section 48A into the 2007 Act which confers powers on relevant professional organisations to obtain documents and information before initiating complaints.

161. New section 48A of the 2007 Act applies where a relevant professional organisation is considering making a complaint to the Commission against a practitioner or is otherwise considering treating a matter as if it were a conduct or regulatory complaint remitted to it by the Commission. In these circumstances, the relevant professional organisation may require the practitioner (or the practitioner's firm or employing practitioner) to provide it with any document or specified information which relates to the matter under consideration (in relation to the potential complaint). But the power cannot be used to require Crown Counsel or a procurator fiscal to provide any document or information.

162. The amendments to sections 17, 37 and 48, and similar provision in new section 48A, of the 2007 Act ensure that the powers conferred by these sections do not require the provision of any document or information that is subject to legal privilege (and which would, in legal proceedings, be protected from disclosure). But they also make it clear that this does not prevent the powers being used to obtain any document or information that is subject to any other right of confidentiality (where legal privilege does not apply). Nor does it prevent the disclosure of any document or information if the client of a practitioner (or the practitioner's firm or employing practitioner) has consented to the disclosure.

163. The amendments to sections 17 and 48 of the 2007 Act also provide that, in the event that a practitioner, a practitioner's firm or an employing practitioner fails without reasonable excuse to provide a document or information sought in relation to a complaint by the Commission or by a relevant professional organisation, the Commission or relevant professional organisation may determine the complaint based on the information before it. But it must first notify the practitioner, the practitioner's firm or the employing practitioner of its intention to do so, and it must allow a further 14 days for the document or information to be provided (or a reasonable excuse to be given for any failure to do so). In determining the complaint, the Commission or relevant professional organisation may draw such inference from a failure to provide the document or information as it considers appropriate.

Section 60 – Power of Commission to request practitioner's details in connection with complaints

164. This section inserts new section 17A (power of Commission to request practitioner's details in connection with complaints) into the 2007 Act. The new section enables the Commission to obtain various contact details in connection with a complaint against a practitioner from the relevant professional organisation for certain purposes where it considers this is necessary. If requested, the relevant professional organisation must provide contact details for practitioners that it holds, whether or not it continues to be authorised to provide legal services.

Section 61 – Services complaints: special provision for complaints against unregulated persons

165. This section inserts new section 22A (services complaints: special provision for complaints against unregulated persons) into the 2007 Act. The new section applies various provisions of the 2007 Act (with some modifications) in relation to a services complaint against a person who was not a practitioner at the time when the services were provided but who was providing legal services to the public for fee, gain or reward. This ensures that the Commission has functions to oversee services complaints in relation to such unregulated persons.

Section 62 – Handling complaints

166. This section amends sections 23 and 24 of the 2007 Act (which relate to the handling by relevant professional organisations of conduct complaints). The changes made to section 23 extend the meaning of a "handling complaint" so that it also includes a complaint which relates to the way in which a regulatory complaint has been dealt with by a relevant professional organisation (this section previously only covered complaints about the manner in which conduct complaints were dealt with by relevant professional organisations).

167. Where a relevant professional organisation receives a report under section 24 that contains a recommendation relating to it, it must notify the Commission the person who made the handling complaint and any other party to the conduct complaint or regulatory complaint, about whether it will comply with the recommendation (and if not, why not). Where the Commission receives such a notification, or where they are of the opinion that the relevant professional organisation has not complied within 3 months, the Commission may direct the organisation to comply (and the organisation is required to comply).

Section 63 – Annual general levy and complaints levy

168. This section amends sections 27, 28 and 29 of the 2007 Act (which relate to levies payable by practitioners in relation to complaints handling by the Commission). The changes to sections 27 and 28 introduce a levy requirement for practitioners that are corporate bodies (previously the levy was only payable by individual practitioners, for example solicitors and advocates). They also ensure that the levy is payable by authorised providers of accredited regulators (see Chapter 3 of Part 1). The amendments to section 28 also provide increased flexibility to the Commission to decide when the complaints levy should become chargeable to the practitioner.

169. The changes made to section 29 allow for the setting of the amount of "the annual contribution" and "complaints contribution" by the Commission (for context, see also the explanatory notes on section 64). They also give the Commission discretion to, in relation to the annual general levy, set different amounts for different persons, and allow it to make rules setting out circumstances in which the Commission may waive a portion of the levy. In addition, the changes ensure that the Commission can get the information it needs to set the levy.

Section 64 – Unregulated providers of legal services: register, annual contributions and complaints contributions

170. This section inserts new sections 28A, 28B and 28C into the 2007 Act (which relate to a voluntary register, annual contributions and complaints contributions concerning unregulated providers of legal services).

171. New section 28A requires the Commission to establish and maintain a register of unregulated providers of legal services. The register will be voluntary for unregulated legal services providers unless they are specified (or fall within a type or description of person that is specified) in regulations that may be made by the Scottish Ministers under new section 28A(3). A provider who is entered in the register must pay a contribution (which is referred to as "the annual contribution"). A provider that is not required to apply for entry in the register may opt to be included in the register as a mark of quality assurance of the legal

services provided by them. The Commission is required to use its resources to fund the register and to investigate, determine and review services complaints against unregulated providers of legal services.

172. New section 28B imposes requirements on the Scottish Ministers in connection with exercising the regulation-making power under new section 28A(3) to require certain unregulated legal services providers (or certain types or description of unregulated legal services provider) to apply for entry in the register to be kept by the Commission under new section 28A(1).

173. New section 28C requires an unregulated provider of legal services to, in circumstances specified in rules made by the Commission (such as when a complaint is upheld against the person), pay a contribution in relation to any services complaint made against it (which is referred to as "the complaints contribution"). In the same manner as section 28 (complaints levy) it will be for the Commission to determine the circumstances when the complaints contribution becomes payable.

Section 65 – Commission rules as to practice and procedure

174. This section amends section 32, and replaces paragraphs 1 and 2 of schedule 3, of the 2007 Act (which set out the rules to be made by the Commission as to practice and procedure).

175. The changes to schedule 3 ensure that the Commission's rules under section 32 include matters which must, and matters which may, be provided for in consequence of other provision made in Part 3 of the Act. For example, the rules must include provision about the criteria to be met for a complaint to be considered eligible, how a complaint is to be assessed with reference to the eligibility criteria, how a complaint is to be categorised, assessing whether to initiate a conduct or regulatory complaint, the circumstances in which the Commission may discontinue or reinstate the investigation of a complaint, the manner in which a services complaint is to be investigated and determined, the timing and manner in which the Commission is to notify parties of its decisions (including with respect to circumstances where a services complaint additionally constituted a conduct complaint or regulatory complaint), evidential matters, notification requirements, membership of the review committee, determining the annual general levy and the payment of the complaint levy.

176. Section 32 is adjusted to ensure that the Commission, before making or changing the rules, also consults with the independent advisory panel established under paragraph 11A of schedule 1 of the 2007 Act and other groups of persons representing the interests of the legal profession.

Section 66 – Conduct or regulatory complaint raised by relevant professional organisation

177. This section inserts new sections 33A, 33B and 33C into the 2007 Act (which concern conduct and regulatory complaints raised by relevant professional organisations). It also makes consequential changes to section 33 of the 2007 Act.

178. New section 33A allows a relevant professional organisation which identifies a matter of concern relating to a practitioner's conduct, in the course of carrying out its regulatory functions, to treat that matter as a conduct complaint and investigate it, without first having to remit it to the Commission, however it must also be satisfied that, if the matter were referred to the Commission it would be considered by the Commission to be an eligible conduct complaint. Where a relevant professional organisation initiates a complaint in this way, it must

notify the Commission which will consider the issue to identify any potential services complaint. The relevant professional organisation must also have regard to the interests of any clients, or former clients, of the practitioner who may have been affected by the practitioner's conduct and notify those clients if the complaint is upheld.

179. New section 33B allows a relevant professional organisation to treat any concern it has about a failure by an authorised legal business to comply with its rules for regulating it, or the terms of its authorisation, as if the matter were a regulatory complaint. Where this concern was identified in the course of carrying out its regulatory functions, the relevant professional organisation does not need to remit the complaint to the Commission before investigating it so long as it is satisfied that, if the matter were referred to the Commission, it would be considered by the Commission to be an eligible regulatory complaint. A regulatory complaint would include failure by the business to meet practice rules regarding accounting and auditing standards set by the business's regulator in accordance with section 44 of the Act. Where a relevant professional organisation initiates a complaint in this way, it must notify the Commission which will consider the issue to identify any potential services complaint.

180. New section 33C enables relevant professional organisations to re-categorise a conduct or regulatory complaint that has been remitted to it by the Commission. In order to investigate the matter, the relevant professional organisation must, as soon as practicable, send details to the Commission of the organisation's re-categorisation of the complaint. The relevant professional organisation must also be satisfied that, if the matter were referred to the Commission it would be considered by the Commission to be an eligible conduct or regulatory complaint as the case may be, before continuing its investigation.

Section 67 – Conduct or regulatory complaint appears to relevant professional organisation during investigation to be services complaint

181. This section amends section 33 of the 2007 Act. It outlines what actions relevant professional organisations should take where it becomes apparent that a complaint may have been wrongly categorised as either regulatory or conduct during the investigation of that complaint, or the mediation process, and should instead be a services complaint. Those actions are to suspend the investigation, consult with the Commission, send the complaint and any related material to the Commission and give notice to the complainer and practitioner.

Section 68 – Conduct complaints: consideration by relevant professional organisations

182. This section amends sections 47 of the 2007 Act (which relates to conduct complaints). The changes to section 47 ensure that an investigation report on a conduct complaint by a relevant professional organisation is also sent to the Commission. The changes also allow a relevant professional organisation to proceed with the investigation of a conduct complaint even if the complaint is withdrawn. This ensures that concerns about a person's conduct can still be investigated and dealt with appropriately by the relevant professional organisation where a complainer decides not to continue with their complaint. It also allows a relevant professional organisation to discontinue an investigation of a conduct complaint, or reinstate a discontinued investigation, if it is in the public interest to do so. It also requires the relevant professional organisation, when considering what action (if any) to take, to take into account any decision taken by the Commission in respect of a services complaint against the practitioner where the services complaint arises from the same matter to which the conduct complaint relates.

Section 69 – Complaints: monitoring and setting of minimum standards by the Commission

183. This section amends sections 35, 36 and 40 of, and inserts new section 36A into, the 2007 Act (which relate to the monitoring and setting of minimum standards in relation to complaints). The changes to section 35 require the Commission to reach agreement with relevant professional organisations on how it will share information with them in relation to its functions relating to services complaints. It allows the Commission to share information about a practitioner with a relevant professional organisation if the Commissions identifies a matter of concern relating to the practitioner.

184. The changes to section 36 ensure that the Commission monitors practice by, and trends in the way in which practitioners, deal with matters resulting in regulatory, as well as conduct, complaints. It removes the ability for the Commission to issue guidance in relation to those trends, as a consequence of new section 36A and the changes to section 40 set out below.

185. New section 36A allows the Commission to issue guidance to relevant professional organisations about how they are to investigate and determine conduct complaints and regulatory complaints. That guidance may relate to timescales within which relevant professional organisations should aim to complete their investigation and determination of complaints. The guidance may also set minimum standards in relation to the matters to which the guidance relates. The new section requires the Commission to first consult the Lord President, each relevant professional organisation and the practitioners they regulate, and any other persons the Commission considers appropriate on initial proposals to set minimum standards, and again consult each relevant professional organisation and any other persons the Commission considers appropriate on subsequent draft guidance which includes the proposed minimum standards. The Commission must take into account any representation made by those consulted.

186. The changes to section 40 allow the Commission to issue guidance to relevant professional organisations relating to their role overseeing how practitioners are to deal with regulatory complaints or conduct complaints made to them, standards that must be set by organisations for practitioners that they regulate, and in respect of any practice (and any trends in practice) identified by the Commission in the way in which practitioners deal with matters which the Commission considers contributes significantly to services complaints being dealt with by the Commission or conduct or regulatory complaints being remitted to the relevant professional organisation. Where the guidance relates to relevant professional organisations, the Commission must first consult the Lord President, each relevant professional organisation and the practitioners they regulate, and any other persons the Commission considers appropriate on the initial proposals to set minimum standards, and again consult each relevant professional organisation and any other persons the Commission considers appropriate on subsequent draft guidance which includes the proposed minimum standards. The Commission must take into account any representations made by those consulted.

Section 70 – Compensation funds: setting of minimum standards by the Commission

187. This section amends section 39 of the 2007 Act (monitoring effectiveness of guarantee funds etc.). It confers powers on the Commission to issue guidance (which may set minimum standards) for the operation and effectiveness of the Client Protection Fund and analogous compensation funds. Before issuing guidance which sets minimum standards, the Commission must first consult the Lord President, each relevant professional organisation and the practitioners they regulate, and any other persons the Commission considers appropriate on

initial proposals to set minimum standards, and again consult each relevant professional organisation and any other persons the Commission considers appropriate on subsequent draft guidance which includes the proposed minimum standards. The Commission must take into account any representations made by those consulted.

Section 71 – Enforcement of minimum standards

188. This section inserts new section 40A into the 2007 Act (enforcement of minimum standards in relation to relevant professional organisations). The new section requires relevant professional organisations to meet minimum standards set for them by the Commission. These minimum standards are to be set out in guidance issued under the following sections of the 2007 Act—

- section 36A(1) in relation to how relevant professional organisations are to investigate and determine conduct complaints and regulatory complaints,
- section 39(1A) in relation to the operation and effectiveness of the Guarantee Fund and any analogous fund maintained by relevant professional organisations,
- section 40(2) in relation to the role of relevant professional organisations in overseeing how practitioners deal with complaints about the matters mentioned in section 40(1)(a) or (b).

189. New section 40A relates to the enforcement of minimum standards made in relation to relevant professional organisations. Subsection (4) allows for a dispute between the Commission and such a body to be submitted to arbitration for final and binding resolution. Otherwise, the Commission may direct the organisation to take steps to address the matter, and the Commission may enforce the steps required through the courts. When making an order under subsection (10), the court can provide that the relevant professional organisation is not required to comply with the direction where the court considers that taking the action proposed in the order would have a detrimental effect on the ability of the relevant professional organisation to comply with its regulatory objectives.

Section 72 – obtaining information from practitioners

190. This section inserts new section 40B into the 2007 Act. That section allows the Commission to request information from a practitioner about complaints received by the practitioner during the 3-year period before the day the request was made, for any monitoring purposes the Commission is undertaking or in connection with the issuing of guidance. This information which can be sought includes:

- the date on which the complaint was received,
- a description of the substance of the complaint,
- the category of personnel in respect of whom the complaint was made,
- the type of services in respect of which the complaint was made,
- any action taken by the practitioner, the practitioner's firm or the employing practitioner (as the case may be) in relation to the complaint,
- the date on which the practitioner's consideration of the complaint concluded,
- an explanation of whether the complaint was resolved,

- any changes in the working practices of, or processes or systems used by, the practitioner, the practitioner's firm or the employing practitioner (as the case may be) arising from the complaint.

Section 73 – Power to disclose information about complaints: Commission

191. This section inserts new section 41A into the 2007 Act. That section enables the Commission to release information about any conduct complaint, regulatory complaint, services complaint or handling complaint, and to disclose the outcome of a complaint, where it is in the public interest to do so. The information may reveal the identity of any practitioner or firm to whom the complaint relates, but it may only reveal the identity of the complainer with the complainer's consent.

Section 74 – Restriction on disclosure of information: Commission

192. This section amends section 43 of the 2007 Act to enable the disclosure of information, relating to complaints, for the purpose of enabling or assisting a regulatory body to exercise its functions. The Scottish Ministers may list, in regulations, the regulatory bodies to which this applies. Before making regulations, the Scottish Ministers must consult the regulatory bodies that are proposed to be specified in regulations, the Lord President, the Commission, the independent advisory panel of the Commission, each category 1 and category 2 regulator and each approved regulator (within the meaning of Part 2 of the 2010 Act).

Section 75 – Power to disclose information about complaints: relevant professional organisations

193. This section inserts new section 51A into the 2007 Act. That section enables the Law Society and other regulators of legal services to disclose information about complaints that they are investigating but only if they consider it to be in the public interest. The information may reveal the identity of any practitioner or firm to whom the complaint relates, but it may only reveal the identity of the complainer with the complainer's consent.

Section 76 – Restriction on disclosure of information: relevant professional organisations

194. This section amends section 52 of the 2007 Act to enable the disclosure of information for the purpose of enabling or assisting any regulatory body to exercise its functions. The Scottish Ministers may list, in regulations, the regulatory bodies to which this applies. Before making regulations, the Scottish Ministers must consult the regulatory bodies that are proposed to be specified in regulations, the Lord President, the Commission, the independent advisory panel of the Commission, each category 1 and category 2 regulator and each approved regulator (within the meaning of Part 2 of the 2010 Act).

Section 77 – Conduct complaints: power to impose unlimited fine and removal of power to award compensation

195. This section amends sections 42ZA, 42ZB, 52, 53, 53ZB, 54, 55, 55A and schedule 4 of the 1980 Act (which relate to the powers of the Law Society, the Scottish Solicitors' Discipline Tribunal and the Court of Session in connection with conduct complaints). These sections remove the powers of the Law Society, the Tribunal and the Court under the 1980 Act to require the payment of compensation, and related provision. Section 53 is also adjusted to allow the Tribunal, in applicable cases, to impose an unlimited fine, and where the solicitor has

been convicted of a criminal offence in relation to the subject matter of the Tribunal's inquiry, to require the Tribunal have regard to the conviction when exercising its powers (such as ordering the payment of a fine or ordering that the solicitor is struck from the roll).

Section 78 – Faculty of Advocates: complaint of professional misconduct and publication of decision

196. This section inserts a new subsection into section 122 of the 2010 Act (Faculty of Advocates: particular rules). The new subsection provides that rules regulating the discipline of advocates (whether made by the Court of Session or on its behalf by the Faculty) must include rules which require the publication of decisions about complaints of professional misconduct against an advocate. It also provides that the rules must require certain matters to be included in the decisions.

Section 79 – Commission membership

197. This section amends paragraphs 2 and 3 of schedule 1 of the 2007 Act (membership of the Commission and terms of appointment). Paragraph 2 requires that 4 (rather than 5) of the "other members" of the Commission (i.e. at least 8, but no more than 20, other members not including the chairing member) are non-lawyers. The other 3 must be lawyer members. Each member is to be appointed for at least 5 but no more than 8 years.

Section 80 – Role of the independent advisory panel

198. This section amends section 41 of the 2007 Act to add the Consumer Panel to the list of mandatory consultees where the Scottish Ministers propose to make regulations to amend the powers or duties of the Commission.

199. This section also amends paragraph 11A of schedule 1 of the 2007 Act (role of the independent advisory panel). It allows the panel to express views on such matters relevant to the Commission's functions as the panel considers appropriate (rather than as the Commission's directs). It also allows the panel to make recommendations to the Commission in relation to any of the Commission's functions and to relevant professional organisations relating to any of their functions conferred by virtue of the Act. It also places a statutory duty on the Commission to ensure the Consumer Panel is adequately funded and resourced to be able to discharge its functions. Furthermore, it confers the function of making recommendations to the Lord President (in relation to the Lord President's functions under this Act) on the panel.

Section 81 – Commission reports

200. This section inserts a new sub-paragraph into paragraph 16 of schedule 1 of the 2007 Act (Commission reports). The existing paragraph requires the Commission to prepare an annual report on the discharge of its functions and the actions it proposes to take the following year. The new sub-paragraph requires each annual report of the Commission to explain how it has discharged its functions in a manner which, in accordance with section 3(1) of the Act, is compatible with the regulatory objectives and it considers is most appropriate to meet those objectives.

201. It also requires each report to provide details of certain directions given under the 2007 Act and to include information about compensation awarded to complainers following services complaints, and whether it has been paid. It must also contain details on the work of each

review committee established by the Commission and the steps taken by the Commission to ensure that each review committee is able to act independently of the Commission when considering and determining each application for review. Before preparing the annual report, the Commission must consult the Lord President, the independent advisory panel of the Commission and each category 1 and 2 regulator.

Section 82 – Minor and consequential amendments

202. This section introduces Parts 2 and 3 of schedule 3, which contain minor and consequential amendments arising from the provisions in Part 3 of the Act.

PART 4 – MISCELLANEOUS

Financial sanctions

Section 83 – Financial sanctions

203. This section amends section 19 of the 2010 Act (financial sanctions) to provide that where an approved regulator collects a financial penalty from one of its licensed providers, the approved regulator may retain a sum from the penalty (that is paid to the Scottish Ministers) or recover a sum from the licensed provider in relation to the regulator's reasonable expenditure incurred in collecting the penalty.

204. The amendments also allow an approved regulator to discontinue its attempts to recover a penalty from one of its licensed providers or to reinstate its attempts that were previously discontinued in each case where the regulator considers it is reasonable to do so.

Licensed legal services providers

Section 84 – Licensing rules: fees

205. This section amends section 14 of the 2010 Act (licensing rules: general) to provide that licensing fees that may be charged by an approved regulator in relation to the issue or renewal of licences for its licensed providers may be different for different categories of licensed providers, different types of licence or different categories of legal services to be provided by the licensed provider under the licence.

Section 85 – Removal of requirement to act for fee, gain or reward

206. This section amends section 47 of the 2010 Act (licensed providers) to remove a requirement that a business entity can only be a licensed legal services provider under Part 2 of the 2010 Act if it provides (or offers to provide) legal services for a fee, gain or reward. It means that a business entity that satisfies the other criteria in section 47 of the 2010 Act (including the criterion that it provides legal services under a licence issued by an approved regulator and in accordance with its licensing rules) will, for the purposes of Part 2 of the 2010 Act, be a licensed legal services provider, even if it does not provide (or offer to provide) such services for a fee, gain or reward. This will allow for third sector and community organisations to own and operate a licensed legal services provider.

Section 86 – Eligibility criteria: law centres

207. This section ensures that a law centre is no longer barred from becoming a licensed legal services provider under Part 2 of the Legal Services (Scotland) Act 2010.

208. In this context, a "law centre" means a body—

- established for the purpose of providing legal services to the public generally as well as to individual members of the public, and
- which does not distribute any profits made either to its members or otherwise but reinvests any such profits for the purposes of the law centre.

Section 87 – Majority ownership

209. This section repeals section 49 of the 2010 Act.

210. Before its repeal, that provision provided that an entity is eligible to be a licensed legal services provider under Part 2 of the 2010 Act if the qualifying investors (solicitor investors or investors who are members of another regulated profession) in the entity had (taken together) at least a 51% stake in the total ownership or control of the entity.

Section 88 – Non-solicitor investors: factors as to fitness

211. This section amends section 64 of the 2010 Act, which sets out matters relevant as respects a non-solicitor investor's fitness. The amendment clarifies that only a significant ownership or control of the body is a relevant matter. What constitutes as "significant" is to be determined by the approved regulator.

Removal of certain practising restrictions

Section 89 – Removal of practising restrictions: law centres, citizens advice bodies and charities

212. Subsection (2) of this section ensures that section 26(1) of the 1980 Act (offence for solicitors to act as agents for unqualified persons) does not apply to a solicitor, registered foreign lawyer, or registered European lawyer pursuing professional activities within the meaning of the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 who is employed full-time on a fixed salary by a body corporate, a law centre, a citizens advice body, or a charity.

213. Subsection (3) ensures that section 32(1)(b) of the 1980 Act (offence for unqualified persons to prepare certain documents) does not apply to a person who is, by virtue of an act of sederunt made under section 32 (power of Court of Session to regulate civil procedure in the sheriff court) of the Sheriff Courts (Scotland) Act 1971, permitted to represent a law centre, a citizens advice body or a charity.

214. Subsection (4) inserts a new section 33BA into the 1980 Act (privilege of law centres, citizens advice bodies and charities from disclosure etc.). The new section ensures that communications involving communication between a law centre, a citizens advice body or a charity and a client has the same protection from disclosure in legal proceedings as would such communications between a solicitor and a client.

215. Subsection (5) inserts a new section 33D into the 1980 Act (practice rules relating to law centres, citizens advice bodies and charities). The new section disapplies any rule made by the Law Society under section 34 of the 1980 Act (rules as to professional practice, conduct and discipline) that prohibits or unduly restricts (i) the involvement of solicitors (who are

authorised to provide legal services) in or with, or employment of such solicitors by, law centres, citizens advice bodies or charities, or (ii) the provision of legal services by such organisations.

216. Subsection (6) inserts a definition for "charity" into section 65(1) of the 1980 Act, to mean a body entered in the Scottish Charity Register.

Offences relating to pretending to be a regulated provider of legal services

Section 90 – Offence of taking or using the title of lawyer

217. This section makes it an offence for a person who is not entered in a register maintained under section 16 or a licensed provider, to take or use the title of lawyer in connection with providing (or offering to provide) legal services to the public for a fee, gain or reward.

The offence does not apply to a person who provides (or offers to provide) such services in relation to the laws, rules, beliefs or practices of a religion, but only if the person makes it clear that the taking or using of the title relates to the provision of legal services in relation to those matters and not to the provision of legal services more generally. This ensures that a person who provides legal services in relation to a religious law, including the interaction between the religious law and secular law does not commit an offence under this section if the person satisfies this requirement. Where a person also provides a legal service that does not relate to a religious law, the offence will apply to the person in the same way as it would any other person (unless the person is entered in a register maintained under section 16 or is a licensed provider when the title is taken or used).

218. A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500) (as at the date of Royal Assent to this Act).

Section 91 – Offence of pretending to be a regulated legal services provider

219. This section makes it an offence for a person who is not entered in the register maintained by a category 1 or category 2 regulator to take or use a name, title (other than that of lawyer), addition or description implying that the person is regulated by the category 1 or category 2 regulator. The offence applies only if this is done in connection with providing (or offering to provide) legal services to the public for a fee, gain or reward.

220. A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500) (as at the date of Royal Assent to this Act).

Section 92 – Offence of pretending to be a member of Faculty of Advocates

221. This section makes it an offence for a person who is not a member of the Faculty to, without reasonable excuse, take or use a name, title, addition or description implying that the person is a member of the Faculty or otherwise pretend to be a member of the Faculty. The offence does not require any connection with providing legal services. For the purpose of this offence, a person is a member of the Faculty if the person is entered in the register maintained by the Faculty under section 16.

222. A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500) (as at the date of Royal Assent to this Act).

Section 93 – Time limit for prosecution of offences

223. This section makes provision about the time limit for prosecution of offences under sections 31(1), 40(1), 90(1), 91(1) and 92(1). Proceedings must be commenced within 2 years of the commission of the offence (or in the case of a continuous contravention, after the last day on which the offence was committed) and within 6 months of the date on which the relevant evidence that the prosecutor believes sufficient to justify proceedings comes to the prosecutor's knowledge. The effect of subsection (5) is that any such proceedings are to be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

Power of the Scottish Ministers to adjust restricted legal services

Section 94 – Power of the Scottish Ministers to adjust restricted legal services

224. This section inserts new section 32A into the 1980 Act. Section 32 of the 1980 Act provides that it is an offence for a person other than a solicitor or certain other legal professionals or public officials to prepare certain documents. The new section enables the Scottish Ministers to amend section 32 to make provision for or in connection with it being an offence for an unqualified person to draw or prepare certain documents or provide certain other legal services. The section title of section 32 is adjusted to reflect this broader scope.

225. Regulations may only be made at the request of the Lord President, the regulatory committee of a category 1 regulator, a category 1 regulator that has no functions other than regulatory ones, an approved regulator or the independent advisory panel established by the Commission. Before making a request, the requestor must consult each category 1 regulator (that has only regulatory functions) or its regulatory committee if it has one, each approved regulator, the panel mentioned in subsection (3)(e), and any other persons or bodies that the requester considers appropriate. Following consultation, the requesting body must (unless the requester is the Lord President) send the Lord President a document setting out an explanation of the change sought by the proposed exercise of the power, the reasons for seeking the change, and copies of any written representations received in response to the consultation. Subject to the Lord President's approval, the requesting body must publish the documents relating to the consultation and request the Scottish Ministers make the required regulations (which are subject to the affirmative procedure).

Lord President's functions under Parts 1 and 2: rule-making power

Section 95 – Lord President's functions under Parts 1 and 2: rule-making making power

226. This section allows the Lord President to make rules in connection with the exercise of the Lord President's functions under Parts 1 and 2. Before making new rules, the Lord President must consult the independent advisory panel of the Commission and each category 1 and category 2 regulator. The Lord President is to determine the manner in which the rules are to be published.

Section 96 – Modification of other enactments

227. This section introduces Parts 4 and 5 of schedule 3, which make minor and consequential amendments.

Section 97 – Review of Act

228. This section requires the Scottish Ministers to undertake a review of the principal changes in relation to the regulation of legal services arising from this Act after around 10 years of commencement and to prepare a report on the review. The Scottish Ministers may delegate the carrying out of the review to another person who is considered appropriate. The Scottish Ministers (or the delegate) must consult regulators and consumers of legal services, the Commission and other persons considered appropriate in connection with the review. The report must be published by the Scottish Ministers and laid before the Scottish Parliament.

PART 5 – GENERAL

Section 98 – Individual culpability for offending by an organisation

229. This section makes provision where offences under the Act are committed by legal entities such as companies, partnerships, and other bodies or associations. Where an offence under the Act is committed by a "relevant organisation", this section provides that the relevant organisation and, in some cases, a "responsible official" (or individual purporting to act in that capacity) in that organisation are both to be held responsible. This section ensures that those running legal entities who are responsible for the decisions leading to an offence under the Part can also be prosecuted for it.

Section 99 – Civil enforcement in relation to offences

230. This section clarifies that where a category 1 or category 2 regulator considers that a person has committed an offence under section 31(1), 39(5), 40(1), 90(1), 91(1) or 92(1) of this Act, the regulator may apply to the relevant sheriff or the Court of Session for an interdict (including an interim interdict) in order to prevent the person from doing anything constituting the offence (or which would constitute the offence). This section does not restrict a category 1 or category 2 regulator from seeking any other court order against a person mentioned in this section.

Section 100 – Regulations

231. This section allows regulations under the Act to include the ancillary provision listed, and to make different provision for different purposes. It does not apply to commencement regulations.

Section 101 – Ancillary provision

232. This section allows the Scottish Ministers, by regulations, to make standalone ancillary provision in relation to the Act, once enacted, or in relation to any provision made under it. Any regulations making ancillary provision which textually amends primary legislation will be subject to the affirmative procedure; otherwise, any regulations making ancillary provision under this power will be subject to the negative procedure.

Section 102 – Interpretation

233. This section defines words and expressions for the purposes that are used in the Act.

Section 103 – Commencement

234. This section provides for the substantive provisions of the Act to come into force in accordance with regulations made by the Scottish Ministers. The regulations may make transitional, transitory or saving provision and may make different provision for different purposes.

Section 104 – Short title

235. This section gives the Act its short title (being the name by which it may be formally cited). The short title of the Act is Regulation of Legal Services (Scotland) Act 2025.

SCHEDULE 1 – LAW SOCIETY OF SCOTLAND

Part 1 – Category 1 regulator

236. This Part amends other enactments relating to the Law Society in consequence of the Society being a category 1 regulator.

Exercise of regulatory functions

237. Paragraphs 1 to 5 adjust sections 3A to 3G of the 1980 Act in consequence of the requirements of a category 1 regulator imposed under Chapter 2 of Part 1.

238. The main changes are to sections 3B and 3F. Section 3B requires the Council of the Law Society ("the Council") to delegate the regulatory functions of the Law Society to its regulatory committee and ensure that the regulatory committee is able to carry out those functions to the exclusion of the Council. Section 3F defines the regulatory functions of the Law Society. This definition follows the definition of regulator functions that applies in section 7 of the Act and particularises it to the precise span of regulation of the Council.

239. Section 3C, which makes provision for the membership of the regulatory committee and its exercise of regulator functions, is repealed. The provisions in Chapter 2 in relation to those matters will apply instead.

240. Sections 3A and 3G of the 1980 Act are consequentially amended to reflect the other changes.

Client Protection Fund

241. Paragraphs 6 to 8 adjust section 43 of the 1980 Act which deals with the Guarantee Fund. The primary change here is to make the regulatory committee of the Law Society responsible for the management and control of the Fund. The Guarantee Fund has also been renamed the "Client Protection Fund".

242. The changes in paragraph 6(2) and (3) are consequential on the provisions made in section 4(4). These enable the Fund to be used for the purpose of providing loans to judicial factors and limiting the claims that an applicant can make in relation to a particular act of dishonesty.

243. Paragraph 6(6) inserts a new section into the 1980 Act to enable the Scottish Ministers to adjust section 43 and schedule 3 of the 1980 Act in respect of the circumstances when claims can be made, the maximum amount of any grant payable and in connection with administrative matters. This power can only be exercised at the request of the Lord President, the regulatory committee or the independent advisory panel of the Commission. Before making a request, the person or body must consult the regulatory committee, the independent advisory panel and any other appropriate persons or bodies. The requestor must also secure the Lord President's agreement. A request must include a document setting out an explanation of the change sought through the request and the reasons for making the request, along with copies of any written representations received during the consultation period. In addition, there is placed on the person or body making the request a requirement to publish those documents.

244. This new section 43A is not wholly consequential on the Law Society becoming a category 1 regulator. While it may be used to adjust the provisions governing the Fund for that purpose, it may also be used for making other changes. It is included in this Part of the schedules as it sits naturally with the other changes being made to section 43.

Part 2 – Regulation of legal businesses

245. This Part of schedule 1 makes a wide range of changes to recalibrate the 1980 Act towards regulating legal businesses. As noted above, a legal business is any business entity that provides legal services to the public and includes sole traders, partnerships and the permitted forms of incorporated practice that are already regulated under the 1980 Act.

246. The changes made to schedule 1 generally remove references to firms and incorporated practices and replace them with the broader concept of the authorised legal business. In other places however, the move shifts the current regulatory provision away from the individual solicitor or practitioner onto the business. This distinction may be less obvious in the case of the sole trader but there is still a business which is distinct from the individual who runs it, and this business will require separate authorisation.

Regulatory functions

247. Paragraph 9 makes a consequential change to section 3F of the 1980 Act.

Suspension of authorisation

248. Paragraph 10 amends section 18 of the 1980 Act to enable the authorisation of a legal business to be withdrawn (as well as recognition of an incorporated practice being revoked) in the circumstances set out in section 18(1A) of the 1980 Act.

Consultants

249. Paragraph 11 amends section 21 of the 1980 Act to bring in the remaining types of authorised legal business for determining whether or not a person is a consultant.

Offence of disqualified solicitors dishonestly seeking employment

250. Paragraph 12 makes consequential changes to section 28 of the 1980 Act.

Rules as to professional practice, conduct and discipline

251. Paragraph 13 amends section 34 of the 1980 Act to permit the Law Society to make rules about professional practice, conduct and discipline in relation to all forms of legal business. This should be read with sections 41 and 48 which also make provision in connection with the making of rules for authorised legal businesses.

252. Paragraph 13(3) makes it clear that the rules can provide that where a recognition of an incorporated practice is revoked, the body's authorisation as a legal business may be reviewed or withdrawn. The loss of recognition for an incorporated practice is likely to make it untenable for it to continue to be authorised. However, there may be circumstances (such as restructuring) where this isn't the case and so flexibility is left to the Law Society to put in place the appropriate rules.

Rules as to accounts etc.

253. Paragraphs 14 to 17 adjust sections 35 to 37A of the 1980 Act (which deal with accounts rules, interest on clients' money etc.) to shift the onus onto compliance with the rules by the legal business. However, provision is made for an individual solicitor (or solicitors) within each firm to have responsibility for compliance to ensure that there is direct accountability.

Powers where excessive fees etc. charged

254. Paragraph 18 makes consequential changes to section 39A of the 1980 Act.

Powers where failure to comply with rules

255. Paragraph 19 makes consequential changes to section 40 of the 1980 Act.

Judicial factors

256. Paragraph 20 makes consequential changes to section 41 of the 1980 Act.

Distribution of sums in client bank account

257. Paragraph 21 adjusts section 42 of the 1980 Act to incorporate authorised legal businesses. In doing so, it is necessary to add to the range of events which may trigger when the powers in the section may apply. The adjustment to section 42(2)(b) is for consistency and modernisation of language. It is not intended to change the legal effect of the provision.

Client Protection Fund

258. Paragraphs 22 to 24 make consequential changes to both section 43 and schedule 3 of the 1980 Act.

Professional indemnity

259. Paragraph 25 makes consequential changes to section 44 of the 1980 Act.

Safeguarding interests of clients

260. Paragraph 26 inserts new sections 45A and 46A into the 1980 Act. Those sections have effect where an authorised legal business whose authorisation to provide legal services is suspended or withdrawn (referred to in the Act as a "former authorised legal business"), or, in the case of an authorised legal business which is effectively a sole solicitor, on the death, incapacity or disqualification of that solicitor. The new sections vest any client funds in the Law Society alone (together with the right to deal with and operate on any client account) and the Society would be able to issue directions setting out how other client assets (files and documents, for example) are to be dealt with. The Council may direct any former authorised legal business to take (or stop taking) any specified action considered necessary or expedient for safeguarding the interests of the clients of the former authorised legal business. The former authorised legal business may appeal to the court against such a direction.

261. Under new section 45A(9), the Court can make an order requiring the former authorised legal business to comply with a direction under subsection (4). It may also vary a direction, or prevent payments being made out of any account in the name of the former authorised legal business (unless the Court gives leave for the payment to be made) or make any other order it sees fit. The Court also has equivalent powers under new section 46A(5).

Recovery of expenses of intervention

262. Paragraph 27 amends section 62A of the 1980 Act and section 70 of the 2010 Act.

263. Section 62A of the 1980 Act is amended to allow the Council to apply to the Court to recover a specified portion of any expenditure incurred as a result of any intervention under new sections 45A and 46A of the 1980 Act. However, it can only do so where the conduct giving rise to the intervention was carried on with the consent or connivance of, or was attributable to any neglect on the part of, the individual against whom the order is sought.

264. Section 70 of the 2010 Act makes provision to safeguard the interests of clients of a licensed provider which is ceasing or has already ceased by giving the approved regulator the power to issue directions setting out how client documents are to be dealt with. The amendment to section 70 vests any client funds in the approved regulator alone (together with the right to deal with the client account). It also allows the approved regulator, to apply to the Court to recover a specified portion of any expenditure reasonably incurred as a result of any intervention under section 70 of the 2010 Act, from a responsible official such as a current or former investor in, or a current or former director of, the licensed provider. However, it can only do so where the conduct giving rise to the intervention was carried on with the consent or connivance of, or was attributable to any neglect on the part of, the individual against whom the order is sought.

Restrictions on employing a struck off or suspended solicitor

265. Paragraph 28 makes consequential amendments to section 47 of the 1980 Act.

Complaints

266. Paragraphs 29 to 33 amend sections 51 to 54 and schedule 4 of the 1980 Act to enable complaints to be brought against all types of authorised legal business in a manner that is similar to how incorporated practices were treated previously. This therefore means that sole traders or law firms may now face complaints for the actions of their business as an entity, in a way that was not previously possible.

Protection of banks

267. Paragraph 34 makes consequential amendments to section 61 of the 1980 Act.

Recovery of Council's expenses

268. Paragraph 35 makes consequential amendments to section 62A of the 1980 Act.

Service of notices

269. Paragraph 36 makes consequential amendments to section 64 of the 1980 Act.

Interpretation

270. Paragraph 37 amends section 65 of the 1980 Act to define "authorised legal business" and "authorised" for the purposes of that Act.

Revenue powers in respect of authorised legal businesses

271. Paragraph 38 amends schedule 1 of the 1980 Act. These changes enable the Law Society to charge an annual fee in relation to an authorised legal businesses. Different fees may be charged based on the financial performance of the business or its size etc. For example, this may mean that fees are set by reference to the Scottish turnover of a legal business or the number of solicitors it employs.

272. The amendments also permit the Law Society to set an annual subscription of £0 for members to enable (but not require) the Law Society to shift to a funding model where the majority, if not all practice fees, are the responsibility of the business rather than individual solicitors.

SCHEDULE 2 — FURTHER PROVISION ABOUT MEASURES OPEN TO THE SCOTTISH MINISTERS

273. This schedule provides more detail on when and how the Lord President may use the measures available to them under section 19. The core procedure for all the measures is contained in Part 6 and supplemented as necessary in each of the preceding Parts.

274. The measures in this Act are similar to those available to the Lord President under the 2010 Act in relation to approved regulators of licensed providers.

Part 1 – Performance targets

275. This Part of the schedule provides further detail about when the Lord President may set performance targets and requires the regulator in question to comply with them.

Part 2 – Directions

276. This Part of the schedule provides further detail about when and how the Lord President may direct a regulator to take action (or refrain from doing something). The Part requires the regulator in question to comply with directions and, if it does not, enables the Lord President to apply to the Court of Session to secure compliance.

Part 3 – Censure

277. This Part of the schedule provides further detail about when and how the Lord President may censure a regulator. This involves the Lord President making and publishing a statement of censure.

Part 4 – Making changes to regulatory functions

278. This Part of the schedule provides further detail about when and how the Lord President may make changes to the regulatory functions of a regulator. It may only be used when the matter cannot be addressed by any of the other measures available to the Lord President.

279. The particular regulator and regulatory scheme will determine how the Lord President is to make changes. This may be by direction from the Lord President to the regulator to change its scheme, if the regulatory scheme is capable of being changed by the regulator. The Lord President may also ask the Scottish Ministers to make the change to the regulator's regulatory functions by regulations if it is not by way of a direction (for example where the regulatory functions are contained in an enactment). Given the significance of such a measure, a special parliamentary procedure for the making of such regulations is set out in paragraph 15 (which comes on top of the existing procedure in Part 6 of the schedule). This gives Parliament the opportunity to see the regulations in draft alongside an explanatory document that sets out the representations made at different stages of the consultation process and any changes made to the regulations as a result.

280. The Lord President must give notice of a decision (in accordance with paragraph 19) to impose a measure under this Part.

Part 5 – Procedure for imposing a measure

281. This Part of the schedule provides further detail about the procedure for the Lord President when taking any measure mentioned in paragraph 19(4).

282. Paragraph 17 requires the Lord President to give a notice of intention to the regulator setting out the type of proposed measure, the details of what is proposed and explaining why the Lord President is satisfied that it is appropriate.

283. Paragraph 18 provides that the regulator has 28 days to make representations in respect of the proposed measure and, in the meantime, the Lord President is to publish the note of intention for the proposed measure and consult such other persons or bodies as they consider appropriate. Where the Lord President is proposing to remove all of the regulatory functions of either an accredited regulator or a body that has acquired rights for its members to conduct litigation and acquired rights of audience, the Lord President must give notice of that intention to each authorised provider regulated by the accredited regulator or body in question and is to

consult them about whether they would like to authorise another regulator to regulate them or whether they themselves would like to form a body and submit an application under section 23 to seek accreditation to be able to regulate them.

284. The Lord President must have regard to any representation made by the regulator when deciding whether or not to proceed with the proposed measure. If they do proceed, they have to give a decision notice to the regulator, notify the consultees about the decision and publish the notice as they consider most appropriate. Paragraph 19(3) sets out that the notice must set out the reasons for taking the measure, the details of the action being taken and the date from which the measure will take effect (if appropriate).

SCHEDULE 3 — MINOR AND CONSEQUENTIAL MODIFICATIONS OF ENACTMENTS

Part 1 – Regulatory framework

285. This Part makes minor and consequential modifications of enactments in connection with regulatory objectives, professional principles and new regulators.

Regulatory objectives and professional principles

286. Paragraphs 1 and 2 make changes to the 2007 Act and the 2010 Act respectively in consequence of the new regulatory objectives and professional principles introduced by Part 1 of the Act. It defines each expression for the purposes of those Acts so that it has the same meaning as in Part 1 of the Act. Some related provisions of the 2010 Act are also repealed or revised in consequence of Part 1, in particular, section 77 (which requires approved regulators to adopt best regulatory practice, including acting in a way that is both compatible with, and which they consider is the most appropriate for meeting, the regulatory objectives) and section 78 (which requires approved regulators to prepare and issue a statement of policy as to how they will comply with their duties under section 77 when exercising their functions under this Part) are repealed.

New regulators

287. Paragraph 3 amends section 32 (offence for unqualified persons to prepare certain documents) and paragraph 1A in Part 1 of schedule 4 (constitution, procedure and powers of the Tribunal) of the 1980 Act. The change to section 32 ensures that the offence in this section does not apply to a person exercising a right to provide legal services acquired under Chapter 3 of Part 1 of this Act, and the changes to paragraph 1A ensures that the non-lawyer members of the Tribunal do not include such a person.

288. Paragraph 4 amends section 12A of the Legal Aid (Scotland) Act 1986 (register of advice organisations). It ensures that a person who has a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Act may not be approved as an advisor by an advice organisation.

289. Paragraph 5 amends sections 48, 72, 73 and 149 and schedule 9 of the 2010 Act. The changes made to sections 48, 72, 73 and schedule 9 replace references to an individual practitioner with references to an authorised legal services provider, with the new references being defined, by virtue of the change made to section 149, as a person having a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Act.

290. Paragraph 6 amends sections 95, 103 and 104 of the Courts Reform (Scotland) Act 2014. The change made to section 95 ensures that the meaning of "legal representative" includes a person having a right to conduct litigation, or a right of audience, acquired by virtue of Chapter 3 of Part 1 of the Act. The changes made to section 103 and 104 make it clear that the powers conferred by each section includes the power to make provision for or about the representation of parties to proceedings in the Court of Session, sheriff courts or Sheriff Appeal Court including persons who do not have a right to conduct litigation, or a right of audience, acquired by virtue of Chapter 3 of Part 1 of the Act.

291. Paragraph 7 amends section 36 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (power to regulate procedure etc.). This change makes it clear that the power conferred by that section includes the power to make provision for or about the representation of the procurator fiscal and participants in inquiry proceedings, including representation of participants by persons who do not have a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Act.

292. Paragraph 8 amends the schedule of the Licensed Legal Services (Specification of Regulated Professions) (Scotland) Regulations 2012 (S.S.I. 2012/213), to reflect the name change of the ACA from the "Association of Commercial Attorneys" to the "Association of Construction Attorneys".

Part 2 – Modification of the 1980 Act in relation to complaints

293. This Part modifies the Solicitors (Scotland) Act 1980 to make provision for conduct complaints and regulatory complaints, as a consequence of this Act.

Conduct complaints suggesting unsatisfactory professional conduct

294. Paragraph 9 amends the 1980 Act to make provision for conduct complaints remitted to the Council by section 6(2) of the 2007 Act (or treated as having been remitted to them under that section by virtue of section 33A(2) of that Act). The following paragraphs describe the changes made to the 1980 Act by paragraph 9.

295. Section 3A of the 1980 Act is amended to prevent conduct complaints remitted to the Council, or those treated as having been so remitted, from being determined by an individual.

296. Section 42ZA of the 1980 Act sets out the Council's powers relating to conduct complaints suggesting unsatisfactory professional conduct. It has been amended to allow the Council (before it determines a conduct complaint) to propose a settlement to the solicitor and complainer, or to accept a proposal from a solicitor that it considers is fair and reasonable in the circumstances. If the settlement is accepted (by the solicitor or, as the case may be, the Council), then the Council must make a direction giving effect to it and may not determine the complaint unless the solicitor has failed to comply with the direction (or the direction is quashed on appeal).

297. Where a complaint is upheld, the Council may now provide that the censure is to have effect for a specified period (and must give reasons for doing so) and the Council may also impose conditions on the solicitor's practising certificate (which may also be time-limited and the Council must give reasons for doing so).

298. The amendments also make provision for appeals as a result of the new decisions that can be made by the Council in section 42ZA. Section 42ZA has been adjusted to provide for the right of appeal to the Tribunal from decisions made by the Council relating to conduct complaints. Section 53ZB of the 1980 Act (which details the powers of the Tribunal on appeal, relating to unsatisfactory professional conduct) has been also adjusted to take account of the new appeals (for example the amendments allow the Tribunal to quash or confirm the decisions of the Council being appealed against) and also lists matters which the Tribunal may take into account in deciding whether to censure a solicitor for a specified period. And section 54A of the 1980 Act has been adjusted to enable an appeal to the Court of Session from those decisions of the Tribunal.

299. New section 53ZAA of the 1980 Act applies where the Tribunal has held an inquiry into a complaint of professional misconduct against a solicitor. If the Tribunal is not satisfied that the solicitor is guilty of professional misconduct, it is open for the Tribunal to instead make a finding of unsatisfactory professional conduct under new section 53ZAA(1). Where it does so, the Tribunal must censure the solicitor (and the censure may be for a specified period) and may direct the solicitor to undertake further education or training, may fine the solicitor or may order that the solicitor's practising certificate is subject to conditions (and those conditions may be for a specified period). New section 53ZAA(7) lists matters which the Tribunal may take into account when deciding whether to censure a solicitor for a specified period. Where a censure or conditions are imposed for a specified period, the Tribunal must give its reasons for doing so. Section 54A of the 1980 Act has been amended to enable an appeal to the Court of Session from a direction or order made by the Tribunal under section 53ZAA.

Regulatory complaints

300. Paragraph 10 amends the 1980 Act to make provision for regulatory complaints remitted to the Council by section 7A(2) of the 2007 Act (or treated as having been remitted to them under that section by virtue of section 33B(2) of that Act). The following paragraphs describe the changes made to the 1980 Act by paragraph 10.

301. As "regulatory complaints" are a new concept in the 1980 Act, section 65 of that Act is amended to include a definition in accordance with the 2007 Act. Section 3A of the 1980 Act is amended to prevent regulatory complaints remitted to the Council, or those treated as having been so remitted, from being determined by an individual.

302. New section 42E has been inserted into the 1980 Act. It introduces powers relating to regulatory complaints into that Act. Regulatory complaints are determined under section 52A of the 2007 Act. However, before they are determined, section 42E(1) of the 1980 Act enables the Council to propose a settlement to the authorised legal business or licensed provider and complainer, or to accept a proposal from an authorised legal business or licensed provider that it considers is fair and reasonable in the circumstances. If the settlement is accepted, then the Council must make a direction giving effect to it and may not determine the complaint unless the authorised legal business or licensed provider has failed to comply with the direction (or the direction is quashed on appeal).

303. Where a regulatory complaint is upheld, the Council must censure the authorised legal business or licensed provider and may provide that the censure is to have effect for a specified period (and must give reasons for doing so in a report). The Council may also require the solicitor of the authorised legal business or licensed provider to undertake further education or

training, impose a fine, impose conditions on the solicitor's practising certificate (which may also be time-limited and the Council must give reasons for doing so), order that the authorisation of a legal business is subject to conditions or impose any other sanction permitted by the regulatory scheme of the Council.

304. The amendments also make provision for appeals as a result of the new decisions that can be made by the Council in the new section 42E. Section 42E(7) enables an authorised legal business or licensed provider to appeal to the Tribunal, and section 42E(8) enables a complainer to appeal to the Tribunal. New section 53ZE provides for the powers of the Tribunal in relation to these appeals. The Tribunal may quash or confirm various decisions of the Council and, among other things, make other orders such as ordering that the practising certificate of the solicitor is subject to conditions, the authorisation of a legal business is withdrawn or subject to conditions, or may impose a fine.

305. Section 51(1A) of the 1980 Act is amended to enable the Council to make a regulatory complaint to the Tribunal under section 51(1). New section 51A of the 1980 Act requires the Council to make rules as to the procedure for determining whether or not to make a regulatory complaint to the Tribunal. Before making any rules, the Council must consult the Tribunal, and the proposed rules must be approved by the Lord President in order to have effect.

306. New section 53ZD of the 1980 Act requires the Tribunal to determine a regulatory complaint made to it by the Council under section 51(1). Where the complaint is upheld, the Tribunal must censure the solicitor of the authorised legal business or licensed provider. The censure may be time-limited, and the Tribunal must give reasons for doing so. The Tribunal may also require the solicitor of the authorised legal business or licensed provider to undertake further education or training, impose a fine, impose conditions on the solicitor's practising certificate (which may also be time-limited and the Council must give reasons for doing so), order that the recognition under section 34(1A) of the incorporated practice is revoked, order that the authorisation of a legal business is withdrawn or is subject to conditions, or impose any other sanction permitted by the regulatory scheme of the Council.

307. The amendments also provide for appeals to the Court of Session. New section 54B of the 1980 Act contains the right of appeal by an authorised legal business or licensed provider from a decision of the Tribunal to the Court of Session. And new section 55B contains the powers of the Court in these appeals. For example, the Court may confirm or quash a determination or decision. It may, among other things, impose a fine, order that the practising certificate of a solicitor is to be subject to conditions, order that the recognition under section 34(1A) of the incorporated practice is revoked, order that the authorisation of a legal business is withdrawn or is to be subject to conditions or impose any other sanction permitted by the regulatory scheme of the Council.

308. New section 62B of the 1980 Act enables the Scottish Ministers to make regulations to amend sections 42E, 53ZE, 54B and 55B to disapply those sections with respect to licensed providers (or reapply those sections if they have been previously disapplied). Such regulations are subject to the negative procedure.[8]

[8] See section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010.

309. Schedule 4 of the 1980 Act is amended to allow the Tribunal to dismiss a regulatory complaint:

- without requiring an authorised legal business to answer the allegations made against it or without holding an inquiry where the Tribunal is of the opinion that the complaint discloses no prima facie case of failure on the part of the authorised legal business to comply with the practice rules or the terms of its authorisation, or where the complainer fails to comply with any rule under section 52 of the 1980 Act, or
- without hearing parties if, after considering the complaint and other documents, the Tribunal forms the opinion that they disclose no case of failure on the part of the authorised legal business to comply with the practice rules or the terms of its authorisation.

310. Similar provision is provided with respect to a regulatory complaint made against a licensed provider.

Procedure relating to complaints

311. Paragraph 11 amends the 1980 Act to require the Council to make rules about the procedure relating to conduct complaints and regulatory complaints. The Lord President must approve the rules.

Publication of decisions

312. Paragraph 12 amends schedule 4 of the 1980 Act to require the Tribunal to publish certain decisions relating to conduct complaints and regulatory complaints (for example a decision under section 53(1)(a) relating to a conduct complaint suggesting professional misconduct). However, the publication of information that could or would identify a person to whom the complaint relates (other than the solicitor against who the complaint was made) is not permitted unless the Tribunal considers it is in the public interest to do so and the person consents to the publication of the information.

Other modifications

313. Paragraph 13 amends the 1980 Act to introduce a duty on the Council to consult the Commission before making any rules about professional practice, conduct and discipline relating to complaints against a member of the Society or authorised legal businesses.

Part 3 – Modification of other enactments in relation to complaints

Legal Aid (Scotland) Act 1986

314. Paragraph 14 amends section 34 of the Legal Aid (Scotland) Act 1986 in consequence of changes made to the 2007 Act by Part 3 of the Act.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

315. Paragraph 15 amends the 1990 Act in consequence of changes made to the 2007 Act by Part 3 of the Act. The amendments also mirror changes made to the 1980 Act relating to conduct complaints. Section 20ZB of that Act is amended to enable the Council to propose a settlement regarding a complaint to the practitioner and complainer, or to accept a proposal

from a practitioner that the Council considers is fair and reasonable in the circumstances. If the settlement is accepted, then the Council must make a direction giving effect to it and may not determine the complaint unless the practitioner has failed to comply with the direction (or the direction is quashed on appeal). The amendments also provide that where the Council censures a practitioner, the censure may be for a specified period and the Council must give its reasons for doing so when intimating the censure. The amendment also provides for appeals to the Tribunal and the powers of the Tribunal in those appeals.

316. New section 20ZF of the 1990 Act provides that the rules made by the Council under section 42D(1)(a) to (d) of the 1980 Act apply in relation to the 1990 Act.

Legal Profession and Legal Aid (Scotland) Act 2007

317. Paragraph 16 amends the 2007 Act in consequence of other provisions of the Act.

Legal Services (Scotland) Act 2010

318. Section 19(1) of the 2010 Act allows for the imposition of a financial penalty. Paragraph 17 amends that section to enable the withdrawal of the imposition of a financial penalty. It also enables the Scottish Ministers to, by regulations (and only with the agreement of the Lord President), specify the maximum amount of financial penalty that may be imposed. Before making regulations, the Scottish Ministers must consult each approved regulator and any other person or body they consider appropriate.

319. Paragraph 17 also amends section 121 of the 2010 Act (professional rules) to ensure that the Faculty consults the Commission before making any rules which relate to complaints against advocates. It also makes other minor amendments to the 2010 Act in consequence of other provisions of the Act.

Part 4 – Miscellaneous modifications of the 1980 Act etc.

320. This Part makes miscellaneous amendments to the 1980 Act and 1990 Act.

The roll and other registers

321. Paragraph 18 amends the provisions of the 1980 Act relating to the Council's function of being the registrar of solicitors and the requirement to keep a roll of solicitors at their secretary's office. The paragraph amends sections 7, 12A, 13, 24A, 60A and paragraphs 18 and 18A of schedule 4 of that Act to require the roll and registers to be available to members of the public, free of charge, by such electronic means as is considered appropriate. Sections 8 and 12B are amended to require enrolled solicitors and registered European lawyers, respectively, to provide contact details to the Council in the first instance and to inform the Council of any changes to these details. Schedule 2 is amended to enable the Council to remove a solicitor's name from the roll where the solicitor has failed to comply with a training contract, and to enable the Council to contact the solicitor by means other than by writing.

322. Paragraph 19 amends sections 17 and 18 of the 1990 Act to require the registers of conveyancing and executry practitioners to be available to and searchable by members of the public, free of charge, by such electronic means as the Council consider appropriate, and also to enable a conveyancing practitioner who has been removed from the register to have their name restored to it.

Restoration of name to roll and registers: appeals

323. Paragraph 20 amends section 10 and schedule 4 of the 1980 Act. Where the Council decides not to restore a solicitor's name to the roll, the solicitor may appeal to the Tribunal within 21 days of the intimation of that decision. Where the Tribunal decides not to restore a solicitor's name to the roll, the solicitor to appeal the decision to the Court of Session. The appeal must be made before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision is intimated to the solicitor. During the appeal 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.

324. Paragraphs 21 and 22 make a similar amendment for registered European lawyers and registered foreign lawyers.

Restoration of name to roll and registers: expenses

325. Paragraph 23 amends schedule 4 of the 1980 Act to enable the Tribunal to make an order in relation to expenses incurred for an application under sections 10(1), 12D(1) and 60A(4D).

Practising certificates and registration certificates

326. Paragraph 24 amends the 1980 Act in relation to practising certificates. It amends section 15 of the 1980 Act to allow the Council, where it has issued a practising certificate subject to conditions, to vary, remove or impose further conditions. It may do so at the request of the solicitor to whom the practising certificate is issued, or on its own initiative. Before doing so, the Council must notify the solicitor of their intention to do so and give the solicitor 14 days to make representations. The Council must take those representations into account when exercising the power. It also provides that failure of a solicitor to comply with a condition of their practising certificate may be treated as professional misconduct or unsatisfactory professional conduct.

327. Paragraph 24 also inserts new section 15A into the 1980 Act with the effect that, except where section 15 has effect, the Council may vary, remove and impose further conditions on the practising certificate both at the point at which the certificate is issued, or at any other time where the Council consider it necessary to do so in the public interest or for the protection of the public. Section 16 is amended to enable a solicitor to appeal to the Court of Session within 14 days of being notified of the decision to vary, remove or impose conditions on their practising certificate under section 15 or 15A.

328. Paragraph 24 also amends section 18 of the 1980 Act with respect to the suspension of solicitors. The amendment enables the Council to suspend from practice a solicitor if the Council considers it is necessary to do so in the public interest or for the protection of the public. Where it intends to do so in the public interest, the Council must notify the solicitor of its intention and give the solicitor 14 days to make representations (and must take those into account when making its decision).

329. Paragraph 25 makes similar amendment with respect to the registration certificates of registered European lawyers and the suspension of registered European lawyers.

Powers where excessive fees etc. charged

330. Paragraph 26 amends the 1980 Act to enable the Council to, on their own initiative, terminate the suspension of a solicitor where that solicitor was suspended for charging excessive fees. Where it does so, the Council must notify the solicitor of its decision and the reasons for the decision and restore the solicitor's practising certificate (and may impose conditions on the certificate). In addition to this, when the Council is satisfied that the solicitor or incorporated practice has met certain requirements (i.e. submitting the account and all documents to the Auditor of the Court of Session for taxation and refunding the client), it must terminate the suspension and restore their practising certificate (and may impose conditions on the certificate).

Powers where failure to comply with rules

331. Paragraph 27 amends the 1980 Act to enable the Council to, on their own initiative, terminate the suspension of a solicitor where that solicitor was suspended for failing to comply with accounts rules. Where it does so, the Council must notify the solicitor of its decision and the reasons for the decision and restore the solicitor's practising certificate (and may impose conditions on the certificate).

332. In addition to this, the Council may terminate the suspension of a solicitor on the basis that they are satisfied that the solicitor (or authorised legal business) is willing and able to comply with the applicable provisions. If it does so, the Council must specify the period within which the solicitor is to comply with those provisions and the solicitor must notify the Council of its compliance. If the solicitor fails to comply within the specified period, the Council may withdraw the practising certificate of the solicitor (or a solicitor who is a member of the authorised legal business) and may suspend the solicitor from practice.

Previous findings of record

333. Paragraph 28 amends the 1980 Act to allow the Law Society to rely on a previous conviction being fact when investigating a disciplinary matter. Where the Council have made a finding based upon a conviction that was subsequently quashed, the person who was convicted may apply to the Council to have the finding revoked.

The Client Protection Fund

334. Paragraph 29 amends the 1980 Act to reflect the change of the name of the Scottish Solicitors' Guarantee Fund to the "Client Protection Fund". Paragraphs 30 and 31 make similar amendments to the 2007 Act and 2010 Act, respectively.

Investment business certificates

335. Paragraph 32 amends the 1980 Act to replace references to "an investment business certificate" with "a licence to carry on incidental financial business". This updates the terminology to reflect current convention and also enables future statutory instruments to update the term.

Appeal from decisions of Tribunal

336. Paragraph 33 contains amendments relating to appeals from decisions of the Tribunal. Sub-paragraph (1) amends section 54 the 1980 Act in consequence of other provisions of the Act. It provides that section 43 of the Act does not apply in relation to an appeal under section 54(1B)(c). Section 43[9] of the Act provides for an appeal by an applicant for authorisation under rules pursuant to section 42, or by an authorised legal business against a relevant authorisation decision, which is defined to mean a decision taken under authorisation rules to refuse an application for authorisation of a legal business, to impose, vary or revoke conditions or restrictions in relation to the authorisation, or to suspend or withdraw an authorisation. The amendment in sub-paragraph (1) disapplies section 43 from section 54 of the 1980 Act because there is already an appeal route for those types of decisions.

337. Sub-paragraphs (3) and (4) amend section 54 of the 1980 Act to enable the Council to appeal (in additional to the existing appeal grounds) a finding by the Tribunal that a solicitor is not guilty of professional misconduct or a decision made under section 53(2), (5) or (5A).

Constitution of Tribunal

338. Paragraph 34 amends schedule 4 of the 1980 Act in relation to the constitution of the Tribunal. It requires the Lord President to consult the Tribunal before appointing members to the Tribunal and requires each solicitor member to have in force a practising certificate when appointed. It also sets out the process for the termination of the appointment of a solicitor member from the Tribunal with the chair of the board being able to request the Lord President terminate the members appointment. It also allows the Chair or the board to appoint a vice chair who can carry out delegated functions.

Procedure of Tribunal

339. Paragraph 35 amends the 1980 Act to allow the Tribunal to arrange for any of their functions to be discharged on their behalf by one of their members other than an excepted function. Examples of an excepted function include a decision under section 53ZAA that a solicitor is guilty of unsatisfactory professional conduct rather than professional misconduct, or any of its appeal functions in relation to complaints suggesting unsatisfactory professional conduct or regulatory complaints.

Communicating and giving effect to Tribunal decisions

340. Paragraph 36 amends the 1980 Act to require a copy of every decision of the Tribunal certified by the clerk to be sent to the Commission. When the Council receives a copy of a decision, the Council must give effect to certain actions in the decision including striking a solicitor off the role, requiring the solicitor to undertake education or training, ordering that the practising certificate of a solicitor be subject to conditions, revoking the recognition of an incorporated practice under section 34(1A) or the withdrawal of (or imposition of conditions in relation to) an authorisation of a legal business.

[9] See paragraph 114.

Appeal against decision of Tribunal to dismiss before enquiry

341. Paragraph 37 amends the 1980 Act to insert new section 54C. That section enables the Council to appeal to the Court of Session against a decision of the Tribunal to dismiss a complaint against a solicitor, an authorised legal business or licensed provider, where the complaint was dismissed before an inquiry was held. The appeal must be made within 21 days of the intimation of the Tribunal's decision to dismiss the inquiry.

342. Paragraph 24 of schedule 4 of the 1980 Act allows the Tribunal to dismiss an appeal without holding an inquiry if the Tribunal is of the opinion that the appeal is manifestly ill-founded or if the appellant fails to comply with any rule made under section 52 of that Act. The new section 54C allows the appellant to appeal to the Court of Session in circumstances where the appeal is dismissed under paragraph 24. The appeal to the Court must be made within 21 days of the Tribunal's decision being intimated to the appellant.

Finality of decisions

343. Paragraph 38 amends the 1980 Act to make it clear that a decision of the Court of Session, in relation to certain appeals, is final. These appeals are:

- an appeal under section 16(1) in relation to an application for a practising certificate,
- an appeal under section 16(2) in relation to a decision of the Council under section 15 to refuse to issue a practising certificate, or to issue it subject to conditions, or to vary, remove or impose conditions on it,
- an appeal under section 16(2A) in relation to a decision of the Council under section 15A to vary, remove or impose conditions on a practising certificate,
- an appeal under section 19(8) in relation to a decision of the Council to refuse to terminate a suspension of a solicitor or to terminate it subject to conditions,
- an appeal under section 24D(1) in relation to an application for a registration certificate,
- an appeal under section 24D(2) in relation to a decision of the Council under section 24C to refuse to issue a registration certificate or to issue one subject to conditions, or to vary, remove or impose conditions,
- an appeal under section 24D(2A) in relation to a decision of the Council under section 24C(3A) or section 24CA to vary, remove or impose conditions on a registration certificate issued to a registered European lawyer,
- an appeal under section 24G(7) in relation to a decision of the Council to refuse to terminate the suspension of a registered European lawyer or to terminate it subject to conditions,
- an appeal under section 47(3) or (4) in relation to a decision of the Council to give permission under subsection (1) of that section.

Other modifications

344. Paragraph 39 makes other minor amendments to the 1980 Act.

345. Sub-paragraphs (2) to (7) remove the requirement that certain matters are to be communicated specifically in writing. Those matters pertain to the suspension of a practising certificate or registration certificate.

346. Sub-paragraph (10) amends section 32 (offence for unqualified persons to prepare certain documents) so that the offence, insofar as it concerns an unqualified person who draws or prepares any writ relating to any action or proceedings in any court, does not apply to a person referred to in substituted paragraph (2B)(a) of that section.

347. Sub-paragraph (12) enables a body corporate to appeal to the Court of Session against a decision by the Council to refuse to recognise the body corporate as being suitable in terms of section 34(1A)(b).

348. Sub-paragraph (13) amends section 44 (professional indemnity) to adjust the meaning of an "authorised insurer" so that references to Part 4 of the Financial Services and Markets Act 2002 are substituted with references to Part 4A of that Act. These amendments are required in consequence of the insertion of Part 4A by the Financial Services Act 2012.

349. Sub-paragraph (15) amends section 61A (solicitors' fees) so that subsection (1) of that section is without prejudice to sections 103(2)(j) and 104(2)(j) of the Courts Reform (Scotland) Act 2014.

350. Sub-paragraph (17) makes provision relating to individual culpability where the offence is committed by an organisation. Where an offence is committed by a "relevant organisation", new section 63A of the 1980 Act provides that the relevant organisation and, in some cases, a "responsible official" or an individual purporting to act in such capacity in that organisation, are both to be held responsible. It ensures that those running legal entities who are responsible for the decisions leading to an offence can also be prosecuted for it.

351. Sub-paragraph (18) amends section 65 (interpretation) to insert definitions for a "category 1 regulator", a "category 2 regulator" and "legal services", with the same meanings as those accordingly provided by section 7 and section 5 of this Act.

Part 5 – Miscellaneous modifications of other enactments

Freedom of information

352. Paragraph 40 inserts new paragraph 61D into schedule 1 of the Freedom of Information (Scotland) Act 2002. This change ensures that category 1 regulators (and for present purposes, the Law Society) are subject to the 2002 Act as respects the exercise of its regulatory functions.

Removal of special provision for confirmation agents and will writers etc.

353. Paragraphs 41 to 43 amend, respectively, the 2007 Act, the 2010 Act and the Enterprise and Regulatory Reform (Scotland) Act 2013. Paragraph 41 repeals a special provision for confirmation agents and will writers, and paragraphs 42 and 43 make consequential changes to the 2010 Act and the 2013 Act respectively to remove references relating to such agents and writers in other enactments.

Civil enforcement of certain offences

354. Paragraphs 44 and 45 and the 1980 Act and 2010 Act respectively clarify that the civil remedy of interdict may be sought with a view to preventing the carrying out of an act that is subject to criminal law penalties under those Acts.

Disclosure requirements in connection with new offences

355. Paragraphs 46 and 47 amend, respectively, schedule 1 of the Disclosure (Scotland) Act 2020 ("the 2020 Act") and schedule A1 of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013. The changes made by paragraph 46 ensure that offences under the 1980 Act, sections 73 and 74 of the 2010 Act, and sections 32, 39, 40, 82, 83 and 84 of the Act are not non-disclosable offences under the 2020 Act. The changes made by paragraph 47 ensure that offences under the 1980 Act, sections 73 and 74 of the 2010 Act, and sections 31, 39, 40, 90, 91 and 92 of the Act must be disclosed in the circumstances required by the Rehabilitation of Offenders Act 1974 (as read with the 2013 Order).

PARLIAMENTARY HISTORY

356. The following is a list of the proceedings in the Scottish Parliament on the Act for the Act and significant documents connected to the Act published by the Parliament during the Act's parliamentary passage.

Proceedings and reports	*Reference*
INTRODUCTION	
Bill as introduced (20 April 2023)	SP Bill 25 Regulation of Legal Services (Scotland) Bill [as introduced] Session 6 (2023)
Policy Memorandum	SP Bill 25–PM Regulation of Legal Services (Scotland) Bill [policy memorandum] Session 6 (2023)
Explanatory Notes	SP Bill 25–EN Regulation of Legal Services (Scotland) Bill [explanatory notes] Session 6 (2023)
Financial Memorandum	SP Bill 25–FM Regulation of Legal Services (Scotland) Bill [financial memorandum] Session 6 (2023)
Delegated Powers Memorandum	SP Bill 25–DPM Regulation of Legal Services (Scotland) Bill [delegated powers memorandum] Session 6 (2023)
Statements on Legislative Competence	SP Bill 25–LC Regulation of Legal Services (Scotland) Bill [legislative competence] Session 6 (2023)
STAGE 1	
Equalities, Human Rights and Civil Justice Committee	
16th meeting, 2023 (5 September 2023) (In private)	SP M Equalities, Human Rights and Civil Justice Committee 5 September 2023, para 4

Proceedings and reports	*Reference*
Evidence session, day 1 (3 October 2023)	SP OR Equalities, Human Rights and Civil Justice Committee 3 October 2023, col 5-34
Evidence session, day 2 (7 November 2023)	SP OR Equalities, Human Rights and Civil Justice Committee 7 November 2023, col 3-25
Evidence session, day 3 (14 November 2023)	SP OR Equalities, Human Rights and Civil Justice Committee 14 November 2023, col 1-32
Evidence session, day 4 (21 November 2023)	SP OR Equalities, Human Rights and Civil Justice Committee 21 November 2023, col 1-32
Evidence session, day 5 (28 November 2023)	SP OR Equalities, Human Rights and Civil Justice Committee 28 November 2023, col 1-36
Evidence session, day 6 (5 December 2023)	SP OR Equalities, Human Rights and Civil Justice Committee 5 December 2023, col 1-24
27th Meeting 2023 (12 December 2023) (In private)	SP M Equalities, Human Rights and Civil Justice Committee 12 December 2023, para 3
2nd Meeting 2024 (23 January 2024) (In private)	SP M Equalities, Human Rights and Civil Justice Committee 23 January 2024, para 1
4th Meeting, 2024 (6 February 2024) (In private)	SP M Equalities, Human Rights and Civil Justice Committee 6 February 2024, para 2
Stage 1 Report (8 February 2024)	Equalities, Human Rights and Civil Justice Committee 1st report, 2024, Regulation of Legal Services (Scotland) Bill Stage 1 report (SPP 525)
Scottish Government's response to Equalities, Human Rights and Civil Justice Committee's Stage 1 Report (16 February 2024)	Letter dated 16 February 2024 from the Minister for Victims and Community Safety to Convener of Equalities, Human Rights and Civil Justice Committee
Delegated Powers and Law Reform Committee	
24th Meeting, 2023 (12 September 2023) (In private)	SP M Delegated Powers and Law Reform Committee 12 September 2023, para 6
Evidence session, day 1 (24 October 2023)	SP OR Delegated Powers and Law Reform Committee 24 October 2023, col 6-42
Evidence session, day 2 (7 November 2023)	SP OR Delegated Powers and Law Reform Committee 7 November 2023, col 2-18
31st Meeting, 2023 (14 November 2023) (In private)	SP M Delegated Powers and Law Reform Committee 14 November 2023, para 7
32nd Meeting, 2023 (21 November 2023) (In private)	SP M Delegated Powers and Law Reform Committee 21 November 2023, para 4
Delegated Powers and Law Reform Committee report (23 November 2023)	Delegated Powers and Law Reform Committee 70th report, 2023, Regulation of Legal Services (Scotland) Bill Stage 1 report (SPP 481)
Whole Parliament	
Stage 1 debate on the Bill's general principles (22 February 2024)	SP OR 22 February 2024, col 74-110

Proceedings and reports	*Reference*
STAGE 2	
First Marshalled List of Amendments for Stage 2	SP Bill 25-ML Regulation of Legal Services (Scotland) Bill [1st marshalled list of amendments for Stage 2] Session 6 (2025)
First Groupings of Amendments for Stage 2	SP Bill 25-G Regulation of Legal Services (Scotland) Bill [1st groupings of amendments for Stage 2] Session 6 (2025)
Second Marshalled List of Amendments for Stage 2	SP Bill 25-ML2 Regulation of Legal Services (Scotland) Bill [2nd marshalled list of amendments for Stage 2] Session 6 (2025)
Second Groupings of Amendments for Stage 2	SP Bill 25-G2 Regulation of Legal Services (Scotland) Bill [2nd groupings of amendments for Stage 2] Session 6 (2025)
Equalities, Human Rights and Civil Justice Committee's consideration of amendments, day 1 (21 January 2025)	SP OR Equalities, Human Rights and Civil Justice Committee 21 January 2025, col 1-42
Equalities, Human Rights and Civil Justice Committee's consideration of amendments, day 2 (28 January 2025)	SP OR Equalities, Human Rights and Civil Justice Committee 28 January 2025, col 1-46
Bill as amended at Stage 2	SP Bill 25A Regulation of Legal Services (Scotland) Bill [as amended at Stage 2] Session 6 (2025)
Revised Explanatory Notes	SP Bill 25A–EN Regulation of Legal Services (Scotland) Bill [revised explanatory notes] Session 6 (2025)
Supplementary Financial Memorandum	SP Bill 25A–FM Regulation of Legal Services (Scotland) Bill [supplementary financial memorandum] Session 6 (2025)
Supplementary Delegated Powers Memorandum	SP Bill 25A–DPM Regulation of Legal Services (Scotland) Bill [supplementary delegated powers memorandum] Session 6 (2025)
Delegated Powers and Law Reform Committee's Report on the delegated powers in the Bill as amended (15 April 2025)	Delegated Powers and Law Reform Committee 24th Report, 2025, Delegated powers in the Regulation of Legal Services (Scotland) Bill as amended at Stage 2 (SPP 766)
STAGE 3	
Marshalled List of Amendments for Stage 3	SP Bill 25A-ML Regulation of Legal Services (Scotland) Bill [marshalled list of amendments selected for Stage 3] Session 6 (2025)
Groupings of Amendments for Stage 3	SP Bill 25A-G Regulation of Legal Services (Scotland) Bill [groupings of amendments selected for Stage 3] Session 6 (2025)
Stage 3 – consideration of amendments and debate on passing the Bill (20 May 2025)	SP OR 20 May 2025, col 36-98

Proceedings and reports	*Reference*
Bill as passed (20 May 2025)	SP Bill 25B Regulation of Legal Services (Scotland) Bill [as passed] Session 6 (2025)
ROYAL ASSENT	
Royal Assent (27 June 2025)	Regulation of Legal Services (Scotland) Act 2025 (asp 8)

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

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a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company,
and available from:

Online
www.tsoshop.co.uk

Mail, Telephone & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
E-mail: customer.services@tso.co.uk
Textphone: 0333 202 5077

ISBN 978-0-10-592094-6

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