LEGAL SERVICES (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Legal Services (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The principal effect of the Legal Services (Scotland) Bill (“the Bill”) is to liberalise the legal services market in Scotland by allowing solicitors who offer legal services to operate using certain business models which are currently prohibited. It will do this by making amendments to the Solicitors (Scotland) Act 1980 (“the 1980 Act”) to remove restrictions on solicitors entering into business relationships with non-solicitors, allowing investment by non-solicitors and external ownership, and by creating a regulatory framework which supports the freeing up of the market while ensuring public protection and the maintenance of quality. It is permissive rather than prescriptive legislation, as the traditional business models will remain an option for those solicitors who choose to carry on practising within that structure.

4. The Bill will create a supportive tiered regulatory framework, as shown below—
   • the Scottish Ministers will license and regulate approved regulators;
   • the approved regulators will license and regulate licensed legal services providers (“licensed providers”);
   • licensed providers, as regulated bodies, will have obligations to manage and oversee people in their business entity – including lawyers, other professionals and non-professionals - in a way which is compatible with the regulatory regime imposed by the approved regulator; and
   • individual professionals within licensed providers will continue to be personally regulated by their own professional bodies.
5. The Bill also includes—
   - regulatory objectives and professional principles which will apply to all regulated legal professionals, whether or not they choose to join licensed providers;
   - measures to support the modernisation of the governance of the Law Society of Scotland ("the Society");
   - statutory codification of the framework for the regulation of the Faculty of Advocates ("the Faculty");
   - provisions to extend rights to obtain confirmation to the estates of deceased persons.

6. Part 1 of the Bill sets out the core regulatory objectives, which are intended to guide the actions of all regulators of legal services, and the professional principles which apply to any legal professional providing legal services. It also establishes the scope of legal services for the purposes of the Bill.

7. Part 2 establishes the regulatory framework within which approved regulators and licensed providers will operate.
   - Chapter 1 sets out the requirements to be met by any organisation seeking to become an approved regulator, and the role of Ministers in approving and authorising regulators and in overseeing the regulatory system thereafter.
   - Chapter 2 sets out the requirements and duties placed on licensed providers.
   - Chapter 3 contains further details of the regulatory framework, including the application of the regulatory objectives and professional principles to approved regulators, the role of the Office of Fair Trading ("the OFT"), how complaints against licensed providers and approved regulators should operate, and various registers and lists which must be maintained.

8. Part 3 creates a new process by which bodies may apply to authorise professionals who are not solicitors to prepare documentation in relation to confirmation - part of the process of winding up the estate of a deceased person.

9. Part 4 contains provisions affecting the regulation of individual legal professionals (as opposed to licensed providers) and modifying the duties of other public bodies.
   - Chapter 1 imposes duties on the Society, the Faculty and others involved in the regulation of legal professionals with regard to the regulatory objectives in Part 1.
   - Chapter 2 creates a statutory basis for the regulation of the Faculty.
   - Chapter 3 amends the 1980 Act to remove restrictions on participation by solicitors in licensed providers, to involve non-solicitors in the governance of the Society, to establish a separation between the regulatory and representative functions of the Society, and to strengthen the sanctions available to solicitors facing disciplinary action who seek to remove themselves from the Roll of solicitors.
Chapter 4 creates new responsibilities for the Scottish Legal Aid Board (“the Board”) and makes adjustments to the legislation governing the Scottish Legal Complaints Commission (“the SLCC”).


11. Schedules 1-6 set out how various powers and sanctions open to Ministers in respect of approved regulators should operate.

12. Schedule 7 sets out the procedure for surrender of authorisation of an approved regulator.

13. Schedule 8 makes provision in relation to investors in licensed providers.

14. Schedule 9 contains an index of expressions used in the Bill.

**Rationale for subordinate legislation**

15. The Bill contains a number of delegated powers provisions. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has considered the importance of each matter against—

- the need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- the need to allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation;
- the need to ensure proper use of parliamentary time;
- the possible frequency of amendment; and
- the need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

16. In general, the approach adopted has been to create an enabling framework, which provides scope for new business models to be appropriately regulated. Regulatory practice changes over time, as markets change and as more targeted forms of intervention are developed. Furthermore, a key policy aim is to support greater innovation in the legal services market, which may lead to business models emerging which have not been identified at this stage. For both these reasons, it is important not to be too prescriptive in primary legislation about the detailed process of regulation, or the kinds of business which may operate in the market; but it is necessary to ensure that the Scottish Ministers and approved regulators have sufficient flexibility to act quickly should it be necessary to protect the public and consumer interest.

17. The relevant provisions are described in detail below. For each provision, this memorandum sets out—

- the person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
This document relates to the Legal Services (Scotland) Bill (SP Bill 30) as introduced in the Scottish Parliament on 30 September 2009

- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- the parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

18. Subordinate legislation is required to implement the Scottish Government’s policy and some form of parliamentary procedure is appropriate. For the decision on negative or affirmative resolution procedure, the Scottish Government have considered carefully the degree of Parliamentary scrutiny that is thought to be required for the orders, balancing the need for the appropriate level of scrutiny with the need to avoid using up Parliamentary time unnecessarily. The balance reflects the views of the Government on the importance of the matters being delegated by the Parliament.

GENERAL SUBORDINATE LEGISLATION PROVISION

19. Section 99 contains the general subordinate legislation provisions. Subsection (1) requires all powers to make regulations to be exercised by statutory instrument. Subsection (2) allows different provision to be made for different purposes and permits the powers to be used to make incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient. The general position is that the powers exercisable by statutory instruments are subject to negative resolution (subsection (3)(b)). The exceptions are those sections listed in subsection (3)(a) which are subject to affirmative resolution (section 8(2)(c) or (5), 26(1), 29(6), 35(1), 55(10), 75(2)(f) or 81(5)), as well as the commencement order in section 102(2) for which there is no Parliamentary procedure.

SUBORDINATE LEGISLATION POWERS - DETAIL

Section 5(6) - Approved regulators

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

20. Section 5 sets out how a professional or other body must apply to the Scottish Ministers to become an approved regulator of licensed providers, and what its application must include.

21. Section 5(6) gives the Scottish Ministers the power to make regulations prescribing fees which they can charge approved regulators, or applicants for the position of approved regulator. This allows both a charge for application, and an ongoing fee. If implemented, it is expected that this ongoing fee would be charged on an annual basis.

Reason for taking power

22. While the Scottish Government does not intend to charge approved regulators or an applicant to become an approved regulator when the Bill is implemented, this may become necessary to protect public funds should the number of applicants or the resources required to
administer the process be higher than expected. Subordinate legislation is considered a suitable way of introducing fees, given that it is to deal with a contingency we anticipate will not arise, it only affects a small class of people (potential approved regulators), and the appropriate level of fees depends on factors we cannot yet determine accurately, and will be likely to vary over time.

Choice of procedure

23. As this power is narrow in scope, and intended only to be used to recoup costs, the negative resolution procedure is considered to offer sufficient parliamentary scrutiny.

Section 6(7) - Approval of regulators

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

24. Section 6 provides the criteria which an applicant must meet before the Scottish Ministers can approve it as an approved regulator of licensed providers. This is the first stage of a two-stage process for becoming an approved regulator.

25. Section 6(7) gives the Scottish Ministers the power to make further provision about approval of approved regulators by regulations, including the process for seeking approval, the criteria for approval (including things that applicants must be able to demonstrate), and what categories of bodies may (or may not) be an approved regulator.

Reason for taking power

26. The details of the approval process and criteria for approval are considered best addressed through subordinate legislation, as they are likely to involve a significant amount of detailed procedural provisions. They may also require revision at short notice in order to refine the process or to deal with any unforeseen issues. The Bill already spells out the main factors which should inform the decision of the Scottish Ministers on an application, but it is possible that other issues will emerge as significant, and the power to add to the criteria will allow this to be taken into account. The ability to specify which categories of body may or may not be approved regulators allows for the possibility that particular kinds of body (whether in terms of organisational form or other functions) may be identified as being particularly suitable or unsuitable for regulating licensed legal services providers.

Choice of procedure

27. As this power will be used to set out the operational details of a process already outlined in the Bill, the negative resolution procedure is considered appropriate.
Section 7(10) - Authorisation to act

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

28. Section 7 sets out the criteria which must be met before the Scottish Ministers can give an approved regulator authorisation to undertake regulatory functions. This is the second stage in the process of allowing a body to act as an approved regulator, with approval (section 6) being the first.

29. Section 7(10) gives the Scottish Ministers a regulation-making power to make further provision regarding the process for authorising an approved regulator to exercise its regulatory functions (as described in section 7(1)-(9)). In particular, this includes the process and criteria for authorisation.

Reason for taking power

30. As with the approval process in section 6, the details of the authorisation process are considered best addressed through subordinate legislation, as they concern matters of operational detail. They may require revision at short notice in order to refine the process or deal with any unforeseen issues which arise.

Choice of procedure

31. As this power will be used to set out the operational details of a process already outlined in the Bill, the negative resolution procedure is considered appropriate.

Section 8(2)(c) - Regulatory schemes

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

32. Section 8 requires approved regulators to make a regulatory scheme for licensing and regulating the provision of legal services by its licensed providers, and to apply that scheme to them. The provision also outlines the required content of such schemes.

33. Section 8(2)(c) gives the Scottish Ministers the power to make regulations specifying matters which must be addressed in the regulatory schemes of approved regulators, in addition to those set out in section 8(2)(a) and (b).
Reason for taking power

34. This gives the Scottish Ministers flexibility to expand upon the regulatory matters which are to be covered by the regulatory schemes, if this proves necessary (for example, to add clarity, or to address unforeseen issues). As such details are likely to change once it is known how the regulatory schemes operate in practice, subordinate legislation is considered the best approach – parliamentary time would not be best spent amending primary legislation to reflect changing operational details.

Choice of procedure

35. Whereas the powers in sections 6 and 7 concern operational detail, this power has the potential to alter the content of the regulatory schemes of approved regulators, adding new requirements which could impose significant additional regulatory burden on both approved regulators and licensed providers. The greater parliamentary scrutiny offered by the affirmative procedure is therefore considered appropriate.

Section 8(5) - Regulatory schemes

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

36. Section 8(5) gives the Scottish Ministers a regulation-making power to allow the regulatory schemes of approved regulators to cover the provision of designated non-legal services by their licensed providers, in addition to the core provision concerning regulation of legal services.

Reason for taking power

37. Section 8 states that the regulatory schemes must cover only the provision of legal services by licensed providers, with “legal services” defined in section 3. This power allows the Scottish Ministers to widen the scope of regulatory schemes should it be discovered that this restriction creates problems in practice – for example where it is difficult in some business models to distinguish legal services from other services, or doing so risks creating duplication or overlaps in regulation within a single business, or creates possibilities for relevant aspects of the business to avoid appropriate regulation. As this is likely only to become apparent once the regulatory schemes are developed, it is considered best addressed through subordinate legislation.

Choice of procedure

38. As with section 8(2)(c), the power in section 8(5) has the potential to significantly change the regulatory schemes of approved regulators, with an impact on the regulators and licensed providers. Therefore, it is considered appropriate that this power be subject to the affirmative procedure.
Section 9(3) - Reconciling different rules

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

39. Section 8(2)(b) provides that the approved regulator’s regulatory scheme must include appropriate provision for dealing with regulatory conflict between it and any professional or regulatory rules of any other body which regulates the provision of legal or other services. For example, conflict between a regulatory scheme and the Society’s rules governing individual solicitors. Section 9 states that such provision must provide for the preventing and resolving of regulatory conflicts, and the avoiding of unnecessary duplication of regulatory rules. Section 9(3) gives the Scottish Ministers a regulation-making power to make further provision about regulatory conflicts which may involve an approved regulator.

Reason for taking power

39. This is a fall-back provision – the general approach is that it is for the approved regulators to resolve regulatory conflict, in discussion as appropriate with other regulators. However, should this prove impossible, or unduly complicated (e.g. because more than one approved regulator is simultaneously negotiating with other regulators), this power allows the Scottish Ministers the flexibility to ensure that such conflicts can be resolved. As the provisions to be made will depend on the detailed circumstances of any particular conflict which may arise, and addresses an issue which is likely to require quick resolution, subordinate legislation is considered appropriate.

Choice of procedure

40. The negative resolution procedure is considered most appropriate in this instance, as the power addresses a narrow area which is well defined in the Bill. Section 9(1) describes the scope of the provision which must be in the approved regulator’s regulatory scheme, and section 9(2) defines “regulatory conflict” for the purposes of the section.

Section 22(1) - More about governance

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

41. Section 22 relates to the provisions on the internal governance arrangements of approved regulators, as covered in sections 20 and 21. Sections 20 and 21 include, for example, provisions to ensure that such arrangements allow the effective and independent exercise of regulatory functions, that any representative functions are clearly separated from regulatory functions, and that individuals within approved regulators are free to notify the Scottish Ministers of any adverse impact on regulatory independence arising from the representative role of the regulator.
42. Section 22(1) gives the Scottish Ministers a regulation-making power to make further provision regarding these internal governance arrangements. This is limited to arrangements relating to the regulatory function of the approved regulators (as opposed, for example, to the representative functions of an approved regulator which was also a professional body).

Reason for taking power

43. This power is intended to allow further detail to be added to the internal governance arrangements described in sections 20 and 21, should this be necessary. Examples of how the power could be used might be to provide more specific provisions regarding the level of lay representation required as a consequence of section 20(2)(c), or to specify some further additional safeguard to ensure the body can operate as a credible and effective regulator. To ensure that the regulatory framework remains robust, any additional provisions will require to be created without unnecessary delay. Therefore, the use of subordinate legislation is considered appropriate.

Choice of procedure

44. As there is provision in the Bill for consultation with the affected parties (approved regulators), and the underlying principles relating to internal governance arrangements are stated clearly in sections 20(1) and 21(1), and the power would only be used to add further detail to this, the negative resolution procedure is considered appropriate.

Section 24(9) - Assessment of licensed providers

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Provision

45. Section 24 provides that approved regulators are responsible for conducting periodic assessments of their licensed providers, to review their compliance with the key duties set out in section 38, and other matters which may be considered appropriate. These assessments must take place at least once in every 3 year period. Section 24(9) gives the Scottish Ministers the power to make further provision, by regulations, about such assessments.

Reason for taking power

46. As with the operational details of any new regulatory framework, the processes and requirements of this assessment process are likely to require some elaboration once the Bill provisions come into force. The ability to do this through subordinate legislation gives the Scottish Ministers sufficient flexibility to address any issues or make changes as required.

Choice of procedure

47. Further provision made using this power will deal with the operational details of the assessment process. Given this, the negative resolution procedure is considered appropriate.
Section 26(1) - Additional powers and duties

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

48. Section 26 relates to the regulatory functions of approved regulators, as set out in sections 23, 24 and 25. Section 26(1) gives the Scottish Ministers the power to make regulations giving approved regulators additional functions as are considered necessary or expedient for them to have for the purposes of regulating licensed providers.

Reason for taking power

49. This is so that if an omission is discovered, or if in the light of experience, the Scottish Ministers consider additional functions to be necessary or expedient, they can require approved regulators to take on those functions.

Choice of procedure

50. This power has a potentially significant impact, in that it can require approved regulators to take on functions which are not set out in the Bill. This is reflected by the requirement for consultation with all approved regulators and the Lord President (plus others as considered appropriate) prior to use of the power. It is also considered appropriate that any regulations made using this power be subject to the affirmative resolution procedure, in order to ensure a proper level of parliamentary scrutiny.

Section 29(6) - Measures open to Ministers

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

51. Section 29 sets out the measures open to the Scottish Ministers should they feel that an approved regulator is not performing its functions adequately. These include, for example, setting performance targets, imposing financial penalties, and the rescission of an approved regulator’s authorisation to regulate. More information can be found in schedules 1-6.

52. Section 29(6) gives the Scottish Ministers a regulation-making power to specify other measures which may be taken by them (subsection (6)(a)), and to make further provisions relating to measures that they can take, including the procedures to be used when taking them (subsection (6)(b)).

Reason for taking power

53. The Bill creates a range of measures of differing intensity to allow the Scottish Ministers to ensure that approved regulators carry out their functions effectively and appropriately in the
public interest. Subsection (6)(a) is intended to be used should it be discovered in practice that further additional measures would be helpful in carrying out this function. This could be because some of the existing suite of powers are found to be insufficiently robust or, at the other extreme, are disproportionately severe for the issues at hand. This power prevents such a situation frustrating the policy intention behind this section, by allowing the Scottish Ministers to ensure that they have the appropriate tools to tackle poor performance on the part of approved regulators.

54. Subsection (6)(b) is intended to be used to give further details around the specifics of the measures which can be taken, and the procedures involved. The exact details of the measures and the procedures surrounding them are considered best set out in subordinate legislation, as this allows greater flexibility to make changes/updates as may be required in the future.

Choice of procedure

55. The power in section 29(6) is one which creates new sanctions on approved regulators, which will be defined in the regulations themselves. Given the potential impact of these sanctions on approved regulators, and the breadth of the power, the affirmative resolution procedure is considered appropriate.

Section 33(1) - Extra arrangements

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Provision

56. Sections 32 and 33 cover the situation whereby licensed providers may be forced to transfer from one approved regulator to another approved regulator, owing to the circumstances described in section 32. For example, this would occur if an approved regulator surrendered its authorisation or had its authorisation rescinded. Section 32 sets out the process and timescales involved in such a transfer. Section 33(1) gives the Scottish Ministers the power to make regulations relating to the transfer arrangements for licensed providers which are required to change approved regulator.

Reason for taking power

57. This power is intended to be used to address any unforeseen circumstances which might occur in the transfer process described in section 32 and, as such, the flexibility of secondary legislation is considered appropriate. It is also intended to be used in two particular situations, described in subsection (2). In both such situations, the issue is likely to arise from a specific case or small number of cases, and secondary legislation is felt appropriate to respond to the particular issues which may arise in such a case.

58. The first of these (subsection (2)(a)) is where a licensed provider has not transferred to a new approved regulator despite being required so to do. In this case, the Scottish Ministers can arrange for the licensed provider in question to be regulated by an approved regulator of their
choice (subject to that approved regulator’s consent). This may be necessary to ensure continuity of regulation where a licensed provider has failed, for whatever reason, to identify a new regulator within a reasonable time.

59. The second case (subsection (2)(b)) is where there is a need to recover fees paid to the old approved regulator, in relation to the current licence of the licensed provider. This may be necessary where, for example, a licensed provider is forced to move to a new regulator whilst having paid an annual fee to the old regulator less than 12 months previously and is unable to recover the outstanding portion of the fee.

Choice of procedure

60. This power will be used to address mostly procedural matters relating to transfer arrangements, with no significant impact on the purpose of the appropriate sections. The negative resolution procedure is therefore considered sufficient in this case.

Section 34(6) - Change of approved regulator

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

61. Section 34 provides for a voluntary transfer by a licensed provider to a new regulator, and sets out the timescale and requirements involved.

62. Section 34(6) gives the Scottish Ministers a regulation-making power to make further provision concerning this voluntary transfer of a licensed provider from one approved regulator to another.

Reason for taking power

63. This allows the Scottish Ministers to deal with any unexpected issues which arise around the transfer of licensed providers, and which are not covered sufficiently by the approved regulator’s regulatory scheme. Given the limited and procedural nature of this power, in addition to the need to address such an issue promptly, the use of subordinate legislation is considered appropriate.

Choice of procedure

64. As this power relates to mainly procedural matters, the negative resolution procedure is considered appropriate.
Section 35(1) - Step-in by Ministers

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

65. Section 35(1) gives Scottish Ministers a regulation-making power to make provision allowing them to establish a body with a view to it becoming an approved regulator.

Reason for taking power

66. In the unlikely event that no existing bodies apply to become approved regulators, or none pass the application process, or an approved regulator ceases to operate and there is no other regulator to which licensed providers can transfer, a new regulatory body would be required in order to implement the provisions of Part 2 of the Bill.

67. This is a fallback provision which we do not envisage being used. Given that the remit of the new body would be limited to those regulatory functions described in this Bill, it would not be an effective use of the Scottish Parliament’s time to create such a body by subsequent primary legislation. It is also possible that such provision will be required urgently to deal with a regulatory gap, particularly if an existing regulator has ceased to operate. Therefore, it is considered appropriate to address this through subordinate legislation.

Choice of procedure

68. The power is, as section 35(4) makes clear, only to be used where necessary to ensure that licensed providers can continue to be effectively regulated. It is likely that the provisions will require to be implemented urgently if there is a regulatory gap, but given the financial and policy implications of creating an entirely new public body, affirmative resolution is considered appropriate.

Section 35(2) - Step-in by Ministers

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

69. Section 35(2) gives the Scottish Ministers a regulation-making power to allow them to act as an approved regulator in circumstances set out in those provisions.

Reason for taking power

70. This power ensures that there is always an approved regulator in place. For example, should an approved regulator fail, or no body applies to become an approved regulator, the Scottish Ministers can take on the regulatory duties until such time as an appropriate body can be found, or established using section 35(1). Such a step would likely be required at short notice to
plug a regulatory gap, and is a safeguard rather than something which is anticipated will be needed, so subordinate legislation is considered appropriate.

Choice of procedure

71. This is a fall-back provision and is only intended to be used if the Government’s policy intention of providing for the regulation of licensed providers might otherwise be frustrated. As the Scottish Ministers would be regulating in accordance with the various details set out for approved regulators in the Bill, and the matter may require urgent resolution the negative resolution procedure seems to offer an appropriate level of scrutiny without adding in undesirable delay.

Section 37(6) - Eligibility criteria

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

Provision

72. Section 37 sets out which types of entity would, and would not, be eligible to become a licensed provider. Section 37(6) gives the Scottish Ministers a regulation-making power to make further provisions around the criteria for eligibility (subsection (6)(a)). It also allows them to expand the list of persons who are classed as “legal practitioners” for the purposes of this section (subsection (6)(b)(i)), and to add an additional type of legally qualified person to section 36(2) (subsection (6)(b)(ii)).

Reason for taking power

73. Subsection (6)(a) gives the Scottish Ministers the flexibility to add further detail around the conditions of eligibility, as may be necessary once the provisions of the Bill are in force. This allows refinement of the current provisions – an example might be to provide further specification of the nature of separation required between a licensed provider and the larger entity of which it forms part, for section 37(3). It also provides the ability to address any unforeseen circumstances.

74. Subsection (6)(b)(i) relates to section 36(2), which provides that an entity is only eligible to be a licensed provider if it employs at least one solicitor providing legal services. Subsection (6)(b)(i) is intended to be used should an additional type of legally qualified individual seek to participate in licensed providers, and possess similar qualifications to those held by a solicitor. For example, should the Faculty allow its members to participate in licensed providers at some point in the future, section 36(2) could be changed to give advocates the same status as solicitors – section 36(2) would then require that either a solicitor or an advocate must be employed in order to be eligible to be a licensed provider.

75. Subsection (6)(b)(ii) allows an additional type of legal practitioner to be added to the list in subsection (5). This is to allow the addition, if appropriate, of any new types of legal practitioner which might be created in the future, thus keeping the Bill up to date.
76. Subordinate legislation is deemed appropriate in this case, as all the cases described above in subsection (6) will require action once the Bill comes into force, and are consequent on changes which may or may not happen. The changes do not undermine the essential safeguard provided for in section 36(2), that a legally qualified professional must be involved in every licensed provider.

**Choice of procedure**

77. Given the limited nature of the power which is likely to be used, if at all, for clarification and technical additions to the requirements of section 37, the negative resolution procedure is considered appropriate.

**Section 39(9) - Head of Legal Services**

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**Provision**

78. Section 39(9) gives the Scottish Ministers the power to make further provisions about Heads of Legal Services of licensed providers, and the functions of such Heads (subsection (9)(a)). It also allows the Scottish Ministers to modify subsection (2) to add an additional type of legally qualified person who would then be eligible to become a Head of Legal Services (subsection (9)(b)).

**Reason for taking power**

79. The operational details around the position of Head of Legal Services may require to be expanded (under subsection (9)(a)) as it is determined how the position operates in practice, or in response to any unforeseen circumstances. This may provide, for example, for further responsibilities to be specified for the Head of Legal Services to ensure an identifiable individual in the licensed provider takes personal responsibility for ensuring the business is complying with regulatory requirements.

80. The power in subsection (9)(b) is intended to be used where an additional class of legally qualified individuals seek to participate in licensed providers, and possess similar qualifications to those held by a solicitor. For example, should the Faculty allow its members to participate in licensed providers at some point in the future, subsection (2) could be changed to give advocates the same status as solicitor, allowing them to take the position of Head of Legal Services.

**Choice of procedure**

81. This power is not likely to raise any contentious issues, being concerned with the details of a position which is described in some depth in the Bill. Therefore, the negative resolution procedure is considered appropriate.
Section 40(7) - Head of Practice

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

82. Section 40 describes the position of Head of Practice, along with the requirements, duties and responsibilities associated with the role. Section 40(7) gives the Scottish Ministers the power to make further provisions about Heads of Practice of licensed providers, and the functions of such Heads.

Reason for taking power

83. The operational details around the position of Head of Practice may require to be expanded as it is determined how the position operates in practice, or in response to any unforeseen circumstances. As this is an operational matter, subordinate legislation is considered appropriate.

Choice of procedure

84. As with section 39(9), this power is not likely to raise any contentious issues, being concerned with the details of a position which is described in some depth in the Bill. Therefore, the negative resolution procedure is considered appropriate.

Section 41(5) - Practice Committee

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

85. Section 41(5) gives the Scottish Ministers the power to make further provisions relating to the Practice Committees of licensed providers, and the functions of such Committees.

Reason for taking power

86. The operational details around Practice Committees may require to be expanded in the light of experience as to how they should operate in practice, or in response to any unforeseen circumstances. As this is an operational matter, subordinate legislation is considered appropriate.

Choice of procedure

87. As with the powers relating to the other named positions within licensed providers in sections 39 and 40, this power is not likely to raise any contentious issues. Therefore, the negative resolution procedure is considered appropriate.
Section 52(2) - More about investors

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

88. Section 52 relates to sections 49-51 which address outside investors in licensed providers (for example, setting out the criteria which must be met by such investors in terms of financial position and behaviour). Section 52(2) gives the Scottish Ministers power to make regulations to make further provision about such outside investors, and for licensing rules about individuals who have an interest in a licensed provider.

89. Such provision may include imposing requirements on licensed providers or those with an interest in licensed providers, defining or clarifying the terminology, specifying the criteria or circumstances by reference to which an outside investor is presumed or held to be fit or unfit, and modifying the definition of investor or outside investor as described in section 52(4).

Reason for taking power

90. This power allows the Scottish Ministers to set out further detail on what must be covered in the “fit to own” test which must be applied by approved regulators to any outside investor in a licensed provider (as described in sections 49 and 50), or in how outside investors should behave.

91. The Bill provides the framework and key issues to be addressed in the fit-to-own test, and provides for the detail to be addressed in regulatory schemes, particularly the licensing rules (see section 49(2) which requires that licensing rules relating to outside investors must explain the basis on which an outside investor’s fitness is determinable). It also sets out in section 51 the behaviour required of outside investors.

92. The safeguards to ensure that outside investors are suitable and behave properly are highly important in ensuring that the public interest and professional standards are protected. It may prove desirable to add further specification to these safeguards, to ensure consistency between the approach taken by different regulators, or to reflect further qualifying tests which are identified in future.

Choice of procedure

93. This power applies to a restricted class of people (outside investors) and is essentially provided to clarify or expand on provisions which are already in the Bill, so as to maximise public protection. Negative resolution procedure is therefore considered appropriate.
Section 55(10) - Safeguarding clients

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

94. Section 55 makes provision to safeguard the interests of clients of a licensed provider which is ceasing, or has already ceased to provide legal services. It sets out the requirements placed on the licensed provider in question, and allows the approved regulator to issue directions to it in order to protect the interests of clients. Such directions may concern making certain documents and information, or money held on behalf of clients or in trust, available. For example, where the licensed provider has ceased to exist, clients may find it difficult or time consuming to gain access to documents and information, or money, not least if the former point of contact is no longer available. The approved regulator’s ability to compel the licensed provider (or former licensed provider) to take such actions as it considers necessary could be used therefore to mitigate the impact on clients.

95. Section 55(10) gives the Scottish Ministers a regulation-making power to make further provision about the steps which are to be taken to safeguard the interests of clients of licensed providers in the circumstances described in subsection (1).

Reason for taking power

96. This power gives the Scottish Ministers the flexibility to deal with unforeseen circumstances, and allows for further elaboration of steps should this be necessary in order to safeguard clients of licensed providers which are ceasing to provide legal services. Given that action may need to be taken quickly in order to ensure that consumers interests are protected, subordinate legislation is considered appropriate.

Choice of procedure

97. Many of the other regulation-making powers in the Bill essentially relate to the specification of who is entitled to undertake a certain role, or the general way in which they should carry out their responsibilities. By contrast, these regulations could impose specific and potentially onerous requirements on licensed providers to do certain things in order to safeguard the interests of individual clients. As such, affirmative procedure is felt to be appropriate.
Section 64(7) - Complaints about regulators

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

98. Section 64 requires the Scottish Ministers to investigate all complaints about approved regulators unless a complaint is considered vexatious, frivolous or without merit and unless it is about the way in which the approved regulator has handled a complaint.

99. Section 64(7) gives the Scottish Ministers the power to make regulations to make further provision about complaints made against approved regulators, and how these are to be dealt with.

Reason for taking power

100. The details of the complaints process are considered best addressed through subordinate legislation, as they have limited scope and are operational in nature. This also allows for revision at short notice in order to refine the process, or deal with any unforeseen issues which arise.

Choice of procedure

101. As the underlying principles behind complaints against approved regulators are set out in the Bill, and this power is concerned with setting out mainly procedural matters, the negative resolution procedure is felt to offer sufficient parliamentary scrutiny.

Section 65 - Complaints about providers

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

102. Section 65 amends the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”), to insert into the 2007 Act a new Part 2A which contains provisions dealing with complaints about licensed providers. It generally provides that Parts 1 and 2 of the 2007 Act should apply in broadly the same way for complaints about licensed providers as it does for legal practitioners. The amendments also provide for how sections 23 to 25 (“handling complaints”) of the 2007 Act apply in relation to how approved regulators deal with the new “regulatory complaints” (created in new section 57B of the 2007 Act). This will operate in broadly the same way as complaints about relevant professional organisations (as defined in section 46 of the 2007 Act).

103. New section 57A(2(b)) of the 2007 Act allows for modification of how complaints are dealt with about practitioners under that Act in respect of complaints about licensed providers,
and section 57D(2) of the 2007 Act allows for modification of how handling complaints are dealt with under the 2007 Act in respect of complaints about approved regulators.

Reason for taking power
104. These powers are fall-back provisions to modify the application of the existing regime to licensed providers and approved regulators, should it prove that the way in which the 2007 Act operates creates any unintended problems when translated into this new context.

Choice of procedure
105. The intention behind these powers is to allow for technical adjustments to be made to the existing complaints regime, so that it can continue to operate effectively in relation to the new forms of licensed provider and approved regulator. They are not intended to substantially alter the rights and obligations of the various parties and, as such, negative resolution procedure is considered to be appropriate.

Section 67(5) - Registers of licensed providers

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
106. Section 67 provides that approved regulators must keep and publish a register of their licensed providers, and lists the information which is to be included. Section 67(5) gives the Scottish Ministers the power to make regulations to make further provision about the information to be contained in the registers of licensed, and to prescribe the manner in which the registers are kept and published.

Reason for taking power
107. The Scottish Ministers may wish to provide more detail on the exact content of such registers and the procedure to be used in keeping and publishing them, and amend such details as necessary once the regulatory framework is in operation. As this power relates to a largely administrative function, it is considered appropriate for the details to be set out in subordinate legislation.

Choice of procedure
108. The negative resolution procedure is considered appropriate in view of the non-contentious and administrative nature of the power.
Section 68(6) - Lists of disqualified persons

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

109. Section 68 provides that an approved regulator must keep and publish a list of the persons it has disqualified from holding a position in a licensed provider (see section 44), and those it has determined to be unfit to be an investor in a licensed provider (see section 49).

110. Section 68(6) gives the Scottish Ministers a regulation-making power to make further provision about the information to be contained in the list of people disqualified from holding a position in a licensed provider, and to prescribe the manner in which those lists are to be kept and published.

Reason for taking power

111. The Scottish Ministers may wish to provide more detail on the exact content of such lists and the procedure to be used in keeping and publishing them and amend such details as necessary once the regulatory framework is in operation. As this power relates to a largely administrative function, it is considered appropriate for the details to be set out in subordinate legislation.

Choice of procedure

112. The negative resolution procedure is considered appropriate in view of the non-contentious and administrative nature of the power.

Section 73(6) - Approving bodies

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

113. Section 73 sets out the requirements of the application to the Scottish Ministers to become an approving body of confirmation agents. Section 73(6) gives the Scottish Ministers a regulation-making power to prescribe fees which they may charge applicants to become approving bodies.

Reason for taking power

114. While the Scottish Government does not intend to charge applicants to become approving bodies when the Bill is implemented, this may become necessary to protect public funds should the number of applicants or the resources required to administer the process be higher than expected. Subordinate legislation is considered a suitable way of introducing fees in such a case.
Choice of procedure

115. As this power is narrow in scope, and intended only to be used to recoup costs, the negative resolution procedure is considered to offer sufficient parliamentary scrutiny.

Section 74(7) - Certification of bodies

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

116. Section 74 sets out the conditions which must be met before the Scottish Ministers can certify a body as an approving body. Section 74(7) gives the Scottish Ministers power to make regulations to make further provision regarding the process for seeking certification, the criteria for certification, and what categories of bodies may or may not be an approving body.

Reason for taking power

117. The details of the certification process are considered best addressed through subordinate legislation, as they may require revision at short notice in order to refine the process, or deal with any unforeseen issues which arise. The ability to determine which types of body may or may not be approving bodies is intended to address any issues which may arise with particular types of body in the future.

Choice of procedure

118. As this power will be used to set out the operational details of a process already outlined in the Bill, the negative resolution procedure is considered appropriate.

Section 75(2)(f) - Regulatory schemes

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

119. Section 75 requires the approving body to have a regulatory scheme which allows for individuals who meet the qualifying criteria to provide confirmation services, and which regulates those members in the provision of those services. It also sets out what must be included in such schemes.

120. Section 75(2)(f) gives the Scottish Ministers a regulation-making power to require approving bodies to cover such regulatory matters as the Scottish Ministers specify in their regulatory schemes, in addition to those already listed in section 75.
This document relates to the Legal Services (Scotland) Bill (SP Bill 30) as introduced in the Scottish Parliament on 30 September 2009

Reason for taking power
121. As with section 8(2)(c) in respect of approved regulators, this gives the Scottish Ministers flexibility to expand upon the regulatory matters which are to be covered by the regulatory schemes for confirmation services, if this proves necessary (for example, to add clarity, or to address unforeseen issues).

Choice of procedure
122. The level of parliamentary scrutiny offered by the affirmative resolution procedure is considered appropriate in this case, as the power has the potential to significantly alter the focus of the regulatory schemes of approving bodies, and to impact on the regulatory burden on approving bodies and confirmation agents.

Section 81(5) - Ministerial intervention

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision
123. Section 81(5) gives the Scottish Ministers power to make regulations to make further provision about approving bodies and confirmation agents.

Reason for taking power
124. A broad power has been taken here to allow the Scottish Ministers to prescribe further safeguards in relation either to those who grant powers to deal with confirmation, or those who carry out this work. Given that the work involved is of a specialist nature, may involve significant amounts of money and potentially vulnerable clients, and is currently restricted to solicitors, it is felt appropriate to retain a reserve power to create further regulatory safeguards, should they prove desirable.

Choice of procedure
125. Given the potentially wide scope of this power, affirmative resolution procedure is considered appropriate.

Section 83 - Complaints about agents

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
126. Section 83 makes provision for complaints about confirmation agents by inserting a new Part 2B into the 2007 Act which contains provisions for confirmation agents.
127. As with section 65, this applies the existing complaints regime set up in the 2007 Act, with approving bodies being generally comparable to professional organisations, and confirmation agents being comparable to other legal practitioners. New sections 57F(2)(b) and 57G(2) of the 2007 Act allow for modification of the existing scheme in respect of these new approving bodies and confirmation agents.

**Reason for taking power**

128. These powers are fall-back provisions to modify the application of the existing regime to confirmation agents and approving bodies, should it prove that the way in which the 2007 Act operates creates any unintended problems when translated into this new context.

**Choice of procedure**

129. The intention behind these powers is to allow for technical adjustments to be made to the existing complaints regime, so that it can continue to operate effectively in relation to the new forms of provider and regulator. They are not intended to substantially alter the rights and obligations of the various parties and, as such, negative resolution procedure is considered to be appropriate.

**Section 92 - Council membership**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

**Provision**

130. Section 92(2)(c) adds a provision (3A(4)) to the Solicitors (Scotland) Act 1980 giving the Scottish Ministers the power to specify either the minimum number or the proportion of members of the Council of the Law Society of Scotland (“the Council”) who must be non-solicitors.

131. Scottish Ministers are also given the power to specify any additional criteria for appointability as non-solicitor members as they consider appropriate, and the minimum number or proportion of those non-solicitor members in relation to whom the additional criteria are to apply.

**Reason for taking power**

132. The presence of suitably qualified non-solicitors on the Council is an important part of the reform of its ongoing regulatory function, and section 92 makes relevant changes to the Solicitors (Scotland) Act 1980 to allow this. Should the Society fail to appoint an adequate number/proportion of such suitably qualified members, however, this power allows the Scottish Ministers to intervene. This power will only be required should the Society’s actions be deemed inadequate. The scope of the change is restricted by the Bill to the narrow issues of: (a) the criteria for appointability as non-solicitor members; and (b) the appropriate number or proportion of non-solicitor members, and this number or proportion will depend on the overall make-up of
the Council, which is not specified in primary legislation. For all these reasons, subordinate legislation is considered appropriate.

Choice of procedure

133. As such an action would involve a significant intervention in the composition of the Council, which plays an important statutory role in maintaining the independence of the solicitors’ profession, it is considered appropriate that any such regulations be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 93 - Regulatory committee

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

134. Section 93(2) adds a provision (section 3B(5)) to the Solicitors (Scotland) Act 1980, giving the Scottish Ministers the power to make further provisions about the Council’s regulatory functions. This can be used if it is deemed necessary in order to ensure that the exercise of those functions is in accordance with the purpose stated in subsection (2) (that the Council’s regulatory functions are exercised independently of any other person or interest, and properly in other respects, in particular with a view to achieving public confidence).

135. The power can also be used to modify the definition of “regulatory functions”, as given in subsection (9), if it is believed that such modification is appropriate.

Reason for taking power

136. The distinction between regulatory and representative functions is important to the scheme of the Bill. The Bill imposes requirements on regulators, and allows those to be adjusted in certain respects by regulation, but it is not considered appropriate for Ministers to interfere with the representative functions of any professional body, including the Society. However, the distinction is not always clear cut, in that some issues (such as continuing professional development) have a regulatory aspect but may also be linked to a professional support and development function. The Society is currently undertaking a governance review, and is considering how the distinction should operate within the Society’s own internal governance. This power will allow flexibility to refine the definition of regulatory function as this work develops.

Choice of procedure

137. As this power would involve altering primary legislation, and would have a significant impact on the governance of the Society, which plays an important statutory role in maintaining the independence of the solicitors’ profession, it is considered appropriate that any such regulations be subject to the level of parliamentary scrutiny that the affirmative procedure provides.
Section 100(1) - Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative/negative resolution of the Scottish Parliament

Provision

138. Section 100(1) gives Scottish Ministers the power to make such supplemental provision, or incidental, consequential, transitional, transitory or savings provisions as they consider necessary or expedient in connection with the Act.

Reason for taking power

139. As with any new body of law, this Bill may give rise to a need for a range of ancillary provisions. This power is considered necessary in order to ensure a smooth transition to the new regulatory regime.

140. The power to make supplemental or incidental provision is considered necessary in order to ensure that the policy intentions of the Bill are achieved. For example, it is possible that with legislation opening up new areas as this does that it is discovered when the policy is implemented that there are unforeseen issues, and this power would allow such changes to be made without the need for further primary legislation. Consequential provision may be required in order to make necessary changes to related legislation - a number of consequential amendments are identified in the Bill as introduced (see, for example, sections 90 and 91), but this power would allow the Scottish Ministers to make further changes should there be an unforeseen interaction with existing legislation. Whereas every effort has been made to try and ensure that there will be no need for transitional or transitory provision, it is not possible to be certain that unforeseen issues will not arise at the time of implementation and this provision is intended to cover that eventuality. Finally, savings provisions allow the operation of provisions in repealed or amended legislation to be preserved in certain circumstances.

141. Without such a power it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with a matter that is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of either Parliament’s or Government’s resources.

Choice of procedure

142. Where such regulations are clearly limited in scope and effect, such as transitional or transitory provisions intended to address temporary issues, the negative resolution procedure is considered appropriate. Such provisions would not have a lasting effect, and would be intended to resolve operational difficulties. However, where any such regulations add to, replace, or omit any part of the text of any Act (including this Act), the affirmative procedure will be used. As such amendment to primary legislation has the potential to have a significant impact on the effect of the Bill, this level of parliamentary scrutiny is considered appropriate.
Section 102(2) - Commencement and short title

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: No procedure

Provision

143. Section 102(1) provides for sections 99, 100 and 101 to come into force the day after Royal Assent. Section 102(2) gives the Scottish Ministers the power to appoint the day on which all other provisions come into force.

Reason for taking power

144. This power allows the Scottish Ministers to control the commencement of the various provisions as they consider appropriate.

Choice of procedure

145. As is usual for commencement orders, no provision is made for laying the order in Parliament. The power is to commence provisions Parliament has already scrutinised, and the timing of such commencement is an administrative issue for the Scottish Ministers.

Schedule 4 Paragraph 2(2) and 11(2) - financial penalties

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

146. Schedule 4 paragraph 2 provides that the Scottish Ministers may impose a penalty, not exceeding a prescribed amount, on approved regulators, in respect of a failure to adhere to their own internal governance arrangements, or to comply with a direction by Scottish Ministers given in accordance with Schedule 2. Paragraph (2)(2) provides that the maximum penalty should be prescribed in regulations. Paragraph 11 allows for interest to be charged in respect of a penalty which is not paid as required, and for regulations to prescribe the rate of interest (paragraph 11(2)).

Reason for taking power

147. The power to prescribe the maximum penalty in regulations allows flexibility to tailor penalties to the likely size and resources of approved regulators, which will only become clear once the Bill is passed. It also allows for flexibility to adjust the maximum level from time to time to reflect inflation or changes in the market. The power to set and vary the interest rate in regulations allows flexibility to set the rate at levels consistent with the general level of interest rates at the time of implementation, and to adjust in the light of subsequent interest rate changes.
Choice of procedure

148. The maximum level of financial penalty and the appropriate interest rate for unpaid penalties are each a single, relatively straightforward issue insofar as the making of regulations are concerned. They do not raise any issues of complexity or principle and the negative resolution procedure is considered appropriate.