Legal Services (Scotland) Bill

3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

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Operational positions and appointment to such positions

Fergus Ewing
44 In section 39, page 20, line 15, after second <a> insert <valid>

Fergus Ewing
45 In section 39, page 20, line 15, leave out <as construed by reference to section 15(1)> and insert <such as may be imposed under section 15(1)(b) or 53(5)>

Fergus Ewing
46 In section 39, page 20, line 27, at end insert—
   <(aa) adhere to the professional principles.>

Fergus Ewing
47 In section 39, page 20, line 38, leave out <as regards> and insert <for exercising>

Fergus Ewing
48 In section 39, page 21, line 4, at end insert <(in their capacity as such)>

Robert Brown
319 In section 39, page 21, line 6, at end insert—
   <( ) Before making regulations under subsection (9), the Scottish Ministers must consult the Lord President.>

Fergus Ewing
49 In section 40, page 21, line 33, at end insert <(in their capacity as such)>

Robert Brown
321 In section 40, page 21, line 33, at end insert—
   <( ) Before making regulations under subsection (7), the Scottish Ministers must consult the Lord President.>

Robert Brown
323 In section 41, page 22, line 14, at end insert—
   <( ) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.>

Fergus Ewing
50 In section 43, page 23, line 34, leave out <Rules made in pursuance of section 10(1)(b) and (c) must (additionally)> and insert <Practice and licensing rules respectively must>

Fergus Ewing
51 In section 43, page 23, line 37, at end insert—
A licensed provider which or another person who is aggrieved by a direction under subsection (4) (or both jointly) may appeal against the direction—

(a) to the sheriff,
(b) within the period of 3 months beginning with the date on which the direction is given.

Fergus Ewing

102 In section 45, page 25, line 12, at end insert—

<(3A) Licensing rules must provide that the licensed provider’s licence may be revoked or suspended if the licensed provider wilfully disregards a disqualification imposed under section 44.>

Designated persons

Fergus Ewing

52 In section 47, page 26, line 31, after <is> insert <written>

Fergus Ewing

53 In section 47, page 26, line 37, leave out <or manager>

Robert Brown

330 In section 47, page 26, line 38, leave out from <, or> to end of line 39

Fergus Ewing

54 In section 47, page 27, line 4, leave out subsection (4)

Fergus Ewing

55 After section 47, insert—

<Working context

(1) A Head of Legal Services is, in furtherance of section 39(5)(aa) and (b), responsible for ensuring that there is (by or under the direction of the Head) adequate supervision of the legal work carried out by the designated persons within the licensed provider.

(2) Only a designated person within a licensed provider may carry out legal work in connection with its provision of legal services.

(3) Nothing in this Part affects the operation of—
(a) section 32 of the 1980 Act or any other enactment which requires that a particular sort of legal work be carried out by an individual of a particular description (or in a particular way), or
(b) any rule of professional practice, conduct or discipline (whether for solicitors or otherwise) which properly so requires.>
Outside investors

Fergus Ewing

104 In section 49, page 27, line 22, leave out from <may> to <but> in line 23

Fergus Ewing

110 In section 50, page 28, line 7, leave out <(including associations),> and insert—

<(  ) family, business or other associations (so far as bearing on character),>

Robert Brown

110A As an amendment to amendment 110, line 2, at end insert <and suitability to be such an investor>

Fergus Ewing

113 In section 50, page 29, line 10, at end insert—

<(  ) Where a non-solicitor investor is a body, it is relevant as respects the investor’s fitness for having an interest in a licensed provider whether or not the persons controlling the body’s affairs would (if they were investors in the licensed provider in their own right) be held to be fit in that regard.>

Robert Brown

113A As an amendment to amendment 113, line 3, leave out <controlling> and insert <having control or substantial influence in>

More about investors

Fergus Ewing

174 In section 52, page 29, line 34, leave out from <including> to end of line 6 on page 30

Fergus Ewing

175 In section 52, page 30, line 8, at end insert—

<(2A) The Scottish Ministers may by regulations—

(a) amend the percentage specified in section (Exemption from fitness test)(4) and paragraph 3A(3) of schedule 8,

(b) amend (by addition, elaboration or exception) a definition in subsection (4).

(2B) Regulations under subsection (2)(a) may (in particular)—

(a) impose requirements to which a licensed provider, or an investor in a licensed provider, is subject,

(b) specify criteria or circumstances by reference to which a non-solicitor investor is to be presumed, or held, to be fit (or unfit),

(c) set out—

(i) what amounts (to any extent) to ownership, control or another material interest,
(ii) what interest (or type) is relevant as regards a particular percentage stake in ownership or control,

(iii) by reference to a family, business or other association, what other interest (or type) also counts towards such a stake.

Robert Brown

175A As an amendment to amendment 175, line 2, after <Scottish Ministers> insert <with the consent of the Lord President>

Fergus Ewing

118 In section 52, page 30, line 9, leave out subsection (3)

Fergus Ewing

119 In section 52, page 30, line 12, after <has> insert <(to any extent)>

Fergus Ewing

177 In section 52, page 30, line 18, at end insert—

<( ) In sections 49 to 51, this section and schedule 8, a reference to a licensed provider includes an applicant to become one.>

Fergus Ewing

214 In section 99, page 58, line 36, at end insert—

<( ) section 52(2A).>

Discontinuance of services

Fergus Ewing

56 In section 53, page 30, line 23, after <reason> insert <(except revocation or suspension of its licence under this Part)>

Fergus Ewing

57 In section 54, page 31, line 8, after <reason> insert <(except revocation or suspension of its licence under this Part)>

Professional practice

Fergus Ewing

58 In section 57, page 33, leave out lines 30 and 31 and insert—

<( ) acting as a litigation practitioner,>

Fergus Ewing

59 In section 57, page 34, line 11, at end insert—
the Court’s determination is final.

60 In section 58, page 34, leave out lines 29 and 30 and insert—

acting as a litigation practitioner.

61 In section 59, page 35, line 9, after <implying> insert <falsely>

62 In section 60, page 35, line 32, leave out <(with any necessary modifications)>

63 In section 60, page 35, line 34, at end insert <but with any necessary modifications>

64 In section 67, page 40, line 23, leave out <that> and insert <on which>

65 In section 67, page 40, line 25, leave out <that> and insert <on which>

Complaints about, and levy payable by, approved regulators

133 In section 64, page 37, line 10, at end insert—

(A1) Any complaint about an approved regulator is to be made to the Scottish Legal Complaints Commission.

(A2) The Commission is to determine whether or not the complaint is—

(a) one for which section 57D(1) of the 2007 Act makes provision,

(b) frivolous, vexatious or totally without merit.

(A3) And—

(a) if the Commission determines that the complaint falls within subsection (A2)(a), the Commission is to proceed by reference to section 57D(1) of the 2007 Act,

(b) if the Commission determines that the complaint falls within subsection (A2)(b), the Commission—

(i) must notify the complainer and the approved regulator accordingly (with reasons),

(ii) is not required to take any further action.

(c) if the Commission determines that the complaint does not fall within subsection (A2)(a) or (b), the Commission must refer the complaint to the Scottish Ministers.>
Fergus Ewing
134 In section 64, page 37, line 11, leave out <made to them about an approved regulator> and insert <about an approved regulator that is referred to them under subsection (A3)(c)>

Fergus Ewing
135 In section 64, page 37, line 13, leave out subsection (2)

Fergus Ewing
136 In section 64, page 37, leave out line 19

Fergus Ewing
137 In section 64, page 37, line 21, leave out subsection (4)

Fergus Ewing
138 In section 64, page 37, line 26, leave out <Scottish Legal Complaints>

Fergus Ewing
139 In section 64, page 37, line 27, at end insert <(and, if they so delegate their function under subsection (1), they may also waive the referral requirement under subsection (A3)(c))>

Fergus Ewing
140 After section 64, insert—

<Levy payable by regulators>

(1) An approved regulator must pay to the Scottish Legal Complaints Commission—

(a) in respect of each financial year, an annual levy,

(b) if arising, a complaints levy.

(2) The amount of the annual levy or complaints levy payable by an approved regulator—

(a) is to be determined by the Commission,

(b) may be—

(i) different from any amount payable as an annual general levy or (as the case may be) a complaints levy under Part 1 of the 2007 Act,

(ii) in either case, of different amounts (including nil) in different circumstances.

(3) The complaints levy arises as respects an approved regulator where—

(a) the Scottish Ministers delegate to the Commission their function under section 64(1) in relation to a complaint made about the approved regulator, and

(b) the Commission upholds the complaint.

(4) Before determining for a financial year the amount of the annual levy or complaints levy, the Commission must consult—

(a) each approved regulator (with particular reference to the proposed amount to be payable by it),

(b) the Scottish Ministers.>
Complaints about providers

Fergus Ewing

141 In section 65, page 39, line 2, at end insert—

<(1A) Section 29 applies for the purposes of subsection (1) as it applies for the purposes of sections 27(1) and 28(1).

(1B) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) and (1A)—

(a) an approved regulator is to be regarded as a relevant professional organisation whose members are its licensed providers,

(b) a licensed provider is to be regarded—

(i) in connection with the annual general levy, as an individual person falling within the relevant category,

(ii) in connection with the complaints levy, as an individual practitioner of the relevant type.>

Fergus Ewing

142 In section 65, page 39, line 3, at beginning insert <But>

Fergus Ewing

143 In section 65, page 39, line 12, at end insert—

<57CA Recovery of levy

(1) An approved regulator must—

(a) secure the collection by it, from its licensed providers, of the annual general levy due by them, and

(b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.

(2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.

(3) Subsection (4) of section 27 applies in relation to any sum due under section 57C(1)(a) (including interest) as it applies in relation to any sum due under subsection (1) of section 27.

(4) Subsection (3) of section 28 applies in relation to any sum due under section 57C(1)(b) (including interest) as it applies in relation to any sum due under subsection (1) of section 28.

(5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—

(a) the approved regulator is to be regarded as the relevant professional organisation,

(b) each of its licensed providers is to be regarded—
(i) in relation to section 27(4), as an individual person falling within the relevant category,
(ii) in relation to section 28(3), as an individual practitioner of the relevant type.

(6) Section 57C(1) is subject to subsection (1).

Fergus Ewing

144 In section 65, page 39, line 24, at end insert—

<“professional principles”,
“regulatory objectives”,>

Appeal procedure

Fergus Ewing

66 After section 70, insert—

<Appeal procedure
(1) This section applies in relation to an appeal to the sheriff under this Part.
(2) The appeal is to be made by way of summary application.
(3) In the appeal, the sheriff may—
   (a) uphold, vary or quash the decision that is the subject of the appeal,
   (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
(4) The sheriff’s determination in the appeal is final.>

Fergus Ewing

162 After section 84, insert—

<Appeal procedure
(1) This section applies in relation to an appeal to the sheriff under this Part.
(2) The appeal is to be made by way of summary application.
(3) In the appeal, the sheriff may—
   (a) uphold, vary or quash the decision that is the subject of the appeal,
   (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
(4) The sheriff’s determination in the appeal is final.>

Confirmation services – further requirements

Fergus Ewing

181 In section 73, page 42, line 37, leave out <Part> and insert <Chapter>
Bill Aitken  
Supported by: James Kelly  
357 In section 74, page 43, line 16, after <may> insert <, with the consent of the Lord President,> 

Fergus Ewing  
151 In section 74, page 43, line 27, at end insert <(any of which may be removed or varied by the Scottish Ministers after consulting the approving body)> 

Bill Aitken  
Supported by: James Kelly  
358 In section 74, page 43, line 27, at end insert— 

<(2A) The Scottish Ministers may, with the consent of the Lord President, amend, add or delete any conditions imposed under subsection (2)(c).> 

James Kelly  
380 In section 74, page 43, line 28, after <body> insert <and what conditions, if any, to impose under subsection (2) or amend, add or delete under subsection (2A)> 

Fergus Ewing  
152 In section 74, page 43, line 38, after <must> insert <, with reasons,> 

James Kelly  
381 In section 74, page 44, line 2, at end insert— 

<together with, in either case, their reasons for doing so.> 

James Kelly  
382 In section 74, page 44, line 7, at end insert— 

<(6A) After considering any representations made under subsection (6), the Scottish Ministers must— 

(a) make a decision as to whether or not to approve the applicant as an approving body and what conditions, if any, to impose under subsection (2) or amend, add or delete under subsection (2A), 

(b) notify the applicant accordingly, together with their reasons for their decision. 

(6B) If notification of the Scottish Ministers’ decision is given to the applicant under subsection (5), it has 28 days beginning with the date of the notification to appeal to the sheriff against that notification.> 

Fergus Ewing  
153 In section 74, page 44, line 11, at beginning insert <in relation to capability to act as an approving body,> 

Fergus Ewing  
154 In section 74, page 44, leave out line 13
James Kelly 383 In section 74, page 44, line 13, at end insert—

<( ) what conditions may be imposed, and the procedure for imposing, amending, adding or removing any condition.>

James Kelly 384 In section 75, page 44, line 17, after <membership> insert <who have the appropriate qualifications and experience>

James Kelly 385 In section 75, page 44, line 23, after <the> insert <qualifications and>

James Kelly 386 In section 75, page 44, line 24, at end insert—

<(ab) require that a confirmation agent keep in place a certificate granted annually by the approving body on the anniversary of the certificate being first granted, conferring the right to provide confirmation services,>

James Kelly 387 In section 75, page 44, line 26, at end insert—

<( ) require that a confirmation agent keep in place sufficient arrangements for compensating persons who, in the opinion of the approving body, suffer pecuniary loss by reason of dishonesty on the part of that agent in providing confirmation services,

( ) include provision for ensuring that such persons may be compensated even although the confirmation agent no longer provides such services or is no longer in existence.>

Fergus Ewing 182 In section 75, page 45, line 18, leave out <Part> and insert <Chapter>

Fergus Ewing 155 In section 76, page 45, line 26, leave out from <approving body> to end of line 27 and insert <Scottish Ministers (but the approving body may collect it on their behalf).>

Fergus Ewing 156 After section 76, insert—

<Review of own performance>

(1) An approving body must review annually its performance.

(2) In particular, a review is to cover the following matters—

(a) the approving body’s compliance with section 75(5),

(b) the exercise of its functions in relation to its regulatory scheme,

(c) its compliance with any measures applying to it by virtue of section 81(3).

(3) The approving body must send a report on the review to the Scottish Ministers.
(4) The report must contain a copy of the approving body’s annual accounts (but only so far as they are relevant in connection with its functions under this Chapter).

(5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(6) The Scottish Ministers may by regulations make further provision about—
   (a) the review of approved bodies’ performance,
   (b) reports on reviews of their performance.

Fergus Ewing

157 In section 77, page 46, line 1, after <implying> insert <falsely>

Fergus Ewing

158 In section 77, page 46, line 2, after <otherwise> insert <so>

Fergus Ewing

183 In section 81, page 48, line 6, leave out <Part> and insert <Chapter>

Fergus Ewing

159 In section 81, page 48, line 8, leave out subsection (4) and insert—
   <(4) An approving body must—
   (a) review annually the performance of its confirmation agents,
   (b) prepare a report on the review,
   (c) send a copy of the report to the Scottish Ministers.>

Fergus Ewing

160 In section 81, page 48, line 12, leave out from <about> to <(b)> in line 14 and insert—
   <(a) about the review of confirmation agents,
   (b) so far as it appears to them to be necessary for safeguarding the interests of clients of confirmation agents—
   (i) concerning the functions of approving bodies,
   (ii) relating to>

Fergus Ewing

166 In section 99, page 59, line 3, leave out <81(5)> and insert <81(5)(b)>

Fergus Ewing

168 In schedule 9, page 80, line 17, after <and> insert <confirmation>

Will writing services

Fergus Ewing

184 After section 81, insert—
Chapter 2

Will Writing Services

Regulation of Will Writers

Will Writers and Services

(1) For the purposes of this Part, will writing services are services that are—
   (a) described in subsection (2), and
   (b) provided (or offered)—
      (i) to members of the public, and
      (ii) for a fee, gain or reward.

(2) The services are those of drawing or preparing wills or other testamentary writings.

(3) For the purposes of this Part, a will writer is a person on whom, in accordance with an
    approving body’s regulatory scheme, the right to provide will writing services is
    conferred.

Fergus Ewing

185 After section 81, insert—

<Approving Bodies

(1) For the purposes of this Chapter, an approving body is a professional or other body
    which is certified as such by the Scottish Ministers under section (Certification of
    bodies).

(2) That is, following an application to them by the body under subsection (3).

(3) An application to become an approving body must include—
    (a) a copy of the applicant’s proposed regulatory scheme (see section (Certification of
        bodies)(1)(b)),
    (b) a description of—
        (i) the applicant’s constitution and composition (including internal structure),
        (ii) its activities.

(4) The applicant—
    (a) must provide the Scottish Ministers with such other information as they may
        reasonably require for their consideration of its application,
    (b) may withdraw its application at any time by giving them written notice to that
        effect.

(5) There is no restriction on the number of approving bodies that may exist at any time.

(6) The Scottish Ministers may by regulations prescribe fees that they may charge an
    applicant to become an approving body.

Fergus Ewing

186 After section 81, insert—

<Certification of Bodies
(1) The Scottish Ministers may certify the applicant as an approving body if they are satisfied that—
   (a) the applicant is suitable to be an approving body,
   (b) the applicant’s proposed regulatory scheme is adequate (as determined with particular reference to section (Regulatory schemes)).

(2) The Scottish Ministers may certify the applicant as an approving body—
   (a) either—
      (i) without limit of time, or
      (ii) for a fixed period,
   (b) with reference to a specified date from which the approving body may exercise its functions in relation to its regulatory scheme,
   (c) subject to conditions (any of which may be removed or varied by the Scottish Ministers after consulting the approving body).

(3) Before deciding whether or not to certify the applicant as an approving body, the Scottish Ministers must consult—
   (a) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
   (b) such other person or body as they consider appropriate.

(4) In consulting under subsection (3), the Scottish Ministers—
   (a) must send a copy of the application to the OFT,
   (b) may send—
      (i) to any other consultee, a copy of the application,
      (ii) to the OFT or any other consultee, a copy of any revised application.

(5) The Scottish Ministers must, with reasons, notify the applicant if they intend to—
   (a) refuse to certify it as an approving body, or
   (b) certify it as such subject to conditions.

(6) If notification is given to the applicant under subsection (5), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
   (a) make representations to the Scottish Ministers,
   (b) take such steps as it may consider expedient.

(7) The Scottish Ministers may by regulations make further provision about certification under this section, including (in particular)—
   (a) the process for seeking their certification,
   (b) in relation to capability to act as an approving body, the criteria for their certification (including things that applicants must be able to demonstrate).

Fergus Ewing

187 After section 81, insert—

<Regulatory schemes>
(1) An approving body must—
   (a) make a regulatory scheme for—
      (i) conferring on any of the individual persons within its membership the right to provide will writing services, and
      (ii) regulating the provision of will writing services by the persons on whom (in accordance with the scheme) that right is conferred, and
   (b) apply the scheme in relation to them.

(2) The regulatory scheme is to—
   (a) describe the training requirements to be met by a prospective will writer,
   (b) incorporate a code of practice to which a will writer (and anyone acting on behalf of the will writer in relation to will writing services) is subject,
   (c) require that a will writer keep in place sufficient arrangements for professional indemnity,
   (d) include rules about—
      (i) the making and handling of any complaint about a will writer,
      (ii) the measures that may be taken by the approving body, in relation to a will writer, if a conduct complaint (as construed by reference to section 2(1)(a) of the 2007 Act (and as if the will writer were a practitioner to whom that section relates)) about the will writer is upheld,
   (e) allow a will writer to make representations to the approving body before it takes any of the measures available to it by virtue of paragraph (d)(ii),
   (f) cover such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as they may so specify).

(3) The code of practice mentioned in subsection (2)(b) must—
   (a) set out the standards to be met by will writers (and persons acting on their behalf in relation to will writing services),
   (b) except in such circumstances as the approving body considers appropriate, prohibit the drawing or preparation of a will or other testamentary writing by a will writer which provides for the writer to be a beneficiary,
   (c) require a will writer who provides the service of storing wills or other testamentary writings to keep in place sufficient arrangements for the storage of such documents (including arrangements in the event of the writer ceasing to provide will writing services),
   (d) make such further arrangements as to the professional practice, conduct or discipline of will writers for which provision is (in the approving body’s opinion) necessary or expedient,
   (e) provide that it is a breach of the code of practice for a will writer to fail to comply with the writer’s duties under any enactment specified in the code,
   (f) provide that a breach of the code of practice by a person acting on behalf of a will writer in relation to will writing services constitutes a breach of the code of practice by the writer,
   (g) allow for—
(i) the rescission or suspension of, or attaching of conditions to the exercise of, the right of a will writer to provide will writing services if the writer contravenes the code of practice,

(ii) the suspension of that right of a will writer if a complaint, suggesting that the writer is guilty of professional misconduct in relation to the provision of will writing services, is made about the writer.

(4) A will writer may appeal against a decision taken under the regulatory scheme to rescind or suspend, or attach conditions to the exercise of, the writer’s right to provide will writing services—

(a) to the sheriff,

(b) within the period of 3 months beginning with the date on which that decision is intimated to the writer.

(5) An approving body must, so far as practicable when exercising its functions under this Chapter, observe the regulatory objectives.

Fergus Ewing

188 After section 81, insert—

<Financial sanctions

(1) Rules included in a regulatory scheme in pursuance of section (Regulatory schemes)(2)(d)(ii) may provide for the imposition of a financial penalty.

(2) A financial penalty provided for by virtue of subsection (1) must not exceed the maximum amount permitted by the Scottish Ministers when giving their certification under section (Certification of bodies).

(3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the approving body may collect it on their behalf).

(4) A will writer may appeal against a financial penalty (or the amount of a financial penalty) imposed on the writer by virtue of this section—

(a) to the sheriff,

(b) within the period of 3 months beginning with the date on which the penalty is intimated to the writer.

(5) Where an appeal is made under subsection (4), no part of the penalty requires to be paid before the appeal is determined or withdrawn.

Fergus Ewing

189 After section 81, insert—

<Review of own performance

(1) An approving body must review annually its performance.

(2) In particular, a review is to cover the following matters—

(a) the approving body’s compliance with section (Regulatory schemes)(5),

(b) the exercise of its functions in relation to its regulatory scheme,

(c) its compliance with any measures applying to it by virtue of section (Ministerial intervention)(3).
(3) The approving body must send a report on the review to the Scottish Ministers.
(4) The report must contain a copy of the approving body’s annual accounts (but only so far as they are relevant in connection with its functions under this Chapter).
(5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
(6) The Scottish Ministers may by regulations make further provision about—
   (a) the review of approved bodies’ performance,
   (b) reports on reviews of their performance.

Fergus Ewing

190 After section 81, insert—

   <Pretending to be authorised

   (1) A person commits an offence if the person—
      (a) pretends to be a will writer (or otherwise pretends to have the right to provide will writing services under this Part), or
      (b) takes or uses any name, title, addition or description implying falsely that the person is a will writer (or otherwise so implying that the person has the right to provide will writing services under this Part).

   (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Fergus Ewing

191 After section 81, insert—

   <Other regulatory matters

   Revocation of certification

   (1) Subsection (2) applies where the Scottish Ministers are satisfied that an approving body has failed to comply with a direction under section (Ministerial intervention)(3).

   (2) The Scottish Ministers may—
      (a) revoke the certification given to the approving body under section (Certification of bodies),
      (b) require the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient in connection with the revocation.

   (3) The revocation under subsection (2) of the certification of an approving body has the effect, from the date on which the revocation becomes effective, of rescinding the right of each of its will writers to provide will writing services (so far as that right is conferred by the approving body in question).

Fergus Ewing

192 After section 81, insert—

   <Surrender of certification

   (1) An approving body may, with the prior agreement of the Scottish Ministers, surrender the certification given to it under section (Certification of bodies).
The approving body must—

(a) take all reasonable steps to mitigate such disruption to the clients of its will writers as is likely to result from the surrender,

(b) in particular, take steps for ensuring that any relevant work is—

(i) completed, or

(ii) taken over by a suitably qualified person,

before the date from which subsection (5) is operative.

The Scottish Ministers may direct the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient—

(a) for the purpose of subsection (2), or

(b) otherwise in connection with the surrender.

Before the Scottish Ministers may agree to the surrender, they must be satisfied that the approving body has complied (or will comply) with—

(a) subsection (2), and

(b) any direction given to it under subsection (3).

The surrender of an approving body’s certification under subsection (1) has, from the date on which the surrender becomes effective, the effect of extinguishing the right of each of its will writers to provide will writing services (so far as that right is conferred by the approving body in question).

Register and list

(1) The Scottish Ministers—

(a) must keep and publish a register of approving bodies,

(b) may do so in such manner as they consider appropriate.

(2) The register is to include the following information in relation to each approving body—

(a) its contact details (including its address, website and telephone number),

(b) the date on which it was given the relevant certification under section (Certification of bodies).

(3) An approving body must—

(a) keep a list of its will writers,

(b) give the Scottish Ministers a copy of the list whenever they request it.

(4) An approving body must give the Scottish Ministers such information about its will writers as the Scottish Ministers may reasonably request.

Ministerial functions

After section 81, insert—

Register and list

(1) The Scottish Ministers—

(a) must keep and publish a register of approving bodies,

(b) may do so in such manner as they consider appropriate.

(2) The register is to include the following information in relation to each approving body—

(a) its contact details (including its address, website and telephone number),

(b) the date on which it was given the relevant certification under section (Certification of bodies).

(3) An approving body must—

(a) keep a list of its will writers,

(b) give the Scottish Ministers a copy of the list whenever they request it.

(4) An approving body must give the Scottish Ministers such information about its will writers as the Scottish Ministers may reasonably request.
An approving body must—

(a) provide such information about its performance in relation to its regulatory scheme as the Scottish Ministers may reasonably request,

(b) do so within 21 days beginning with the date of the request (or such longer period as the Scottish Ministers may allow).

An approving body—

(a) if directed to do so by the Scottish Ministers, must—

(i) review its regulatory scheme (or any relevant part of it), and

(ii) report to them its findings and (if appropriate) inform them of any proposed amendments to the scheme,

(b) may amend its regulatory scheme so as to give effect to the proposed amendment, but—

(i) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,

(ii) the Scottish Ministers may not give their approval before they have consulted such person or body as they consider appropriate.

The Scottish Ministers may—

(a) if, after consulting such person or body as they consider appropriate, they consider that an approving body’s regulatory scheme is not (or is no longer) adequate, direct the approving body to amend the regulatory scheme in such manner as they may specify,

(b) if they are satisfied that an approving body has not complied with a requirement imposed on it by or under this Chapter, direct the approving body to take specified remedial action (or refrain from doing something).

An approving body must—

(a) review annually the performance of its will writers,

(b) prepare a report on the review,

(c) send a copy of the report to the Scottish Ministers.

The Scottish Ministers may by regulations make further provision—

(a) about the review of will writers,

(b) so far as it appears to them to be necessary for safeguarding the interests of clients of will writers—

(i) concerning the functions of approving bodies,

(ii) relating to will writers.

Fergus Ewing

After section 81, insert—

<Step-in by Ministers

(1) The Scottish Ministers may by regulations make provision which establishes a body with a view to its becoming an approving body.
(2) The Scottish Ministers may by regulations make provision which allows them to act as an approving body in such circumstances as the regulations may prescribe.

(3) Regulations under subsection (2) may provide for this Chapter to apply with or subject to such modifications as the regulations may specify.

(4) No regulations are to be made under subsection (1) or (2) unless the Scottish Ministers believe that their intervention under this section is necessary, as a last resort, in order to ensure that the provision of will writing services by will writers is regulated effectively.

Fergus Ewing

196 In section 82, page 48, line 16, after <74(3)(a)> insert <or (Certification of bodies)(3)(a)>

Fergus Ewing

197 In section 83, page 48, line 33, after <agents> insert <and will writers>

Fergus Ewing

198 In section 83, page 49, line 1, after <agent> insert <or will writer>

Fergus Ewing

200 In section 83, page 49, line 15, at end insert—

   <(1A) A will writer must pay to the Commission—
      (a) the annual general levy, and
      (b) the complaints levy (if arising),
   in accordance with Part 1.>

Fergus Ewing

201 In section 83, page 49, line 15, at end insert—

   <(1B) Section 29 applies for the purposes of subsections (1) and (1A) as it applies for the purposes of sections 27(1) and 28(1).

      (1C) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) to (1B)—
         (a) an approving body is to be regarded as a relevant professional organisation whose members are its licensed providers,
         (b) a confirmation agent or (as the case may be) will writer is to be regarded—
            (i) in connection with the annual general levy, as an individual person falling within the relevant category,
            (ii) in connection with the complaints levy, as an individual practitioner of the relevant type.>

Fergus Ewing

199 In section 83, page 49, line 15, at end insert—
Recovery of levy

(1) An approving body must—

(a) secure the collection by it, from its confirmation agents or (as the case may be) will writers, of the annual general levy due by them, and

(b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.

(2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as its applies in relation to any sum due under subsection (2)(b) of section 27.

(3) Subsection (4) of section 27 applies in relation to any sum due under section 57H(1)(a) and (1A)(a) (including interest) as its applies in relation to any sum due under subsection (1) of section 27.

(4) Subsection (3) of section 28 applies in relation to any sum due under section 57H(1)(b) and (1A)(b) (including interest) as its applies in relation to any sum due under subsection (1) of section 28.

(5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—

(a) the approving body is to be regarded as the relevant professional organisation,

(b) each of its confirmation agents or (as the case may be) will writers is to be regarded—

(i) in relation to section 27(4), as an individual person falling within the relevant category,

(ii) in relation to section 28(3), as an individual practitioner of the relevant type.

(6) Section 57H(1) and (1A) is subject to subsection (1).

Interpretation of Part 2B

161 In section 83, page 49, leave out line 19

Fergus Ewing

202 In section 83, page 49, line 19, at end insert—

"will writer",

Fergus Ewing

163 In section 85, page 49, line 33, leave out <of the 1980 Act>

Fergus Ewing

203 In section 85, page 49, line 34, after <Act> insert <—

( ) in subsection (1), after paragraph (c) insert “or

(d) any will or other testamentary writing,”,
( ) in subsection (2)(a), for “or papers” substitute “, papers, will or testamentary writing”,

( )>

Fergus Ewing

164 In section 85, page 49, line 35, leave out <Legal Services (Scotland) Act 2010> and insert <2010 Act>

Fergus Ewing

204 In section 85, page 49, line 35, at end insert—

<( ) after subsection (2C) insert—

“(2D) Subsection (1)(d) does not apply to a will writer within the meaning of Part 3 of the 2010 Act.”,>

Fergus Ewing

205 In section 85, page 50, line 1, after <agents> insert <or will writers>

Fergus Ewing

165 In section 85, page 50, line 1, leave out <Legal Services (Scotland) Act 2010> and insert <2010 Act>

Fergus Ewing

206 In section 85, page 50, line 5, after <agent> insert <or will writer>

Fergus Ewing

207 In section 85, page 50, line 9, after <agents> insert <or will writers>

Fergus Ewing

213 In section 93, page 56, line 29, after <agents> insert <or will writers>

Fergus Ewing

215 In section 99, page 59, line 3, at end insert—

<( ) section (Regulatory schemes)(2)(f),
( ) section (Ministerial intervention)(5)(b),
( ) section (Step-in by Ministers)(1).>

Fergus Ewing

216 In schedule 9, page 80, line 16, at end insert—

<approving body (of will writer) section (Approving bodies)>

Fergus Ewing

217 In schedule 9, page 80, line 18, leave out <section 75> and insert <sections 75 and (Regulatory schemes)>
In schedule 9, page 80, line 18, at end insert—

\(<\text{will writer and will writing services section} \text{(Will writers and services)}>\)

Applying the regulatory objectives

In section 86, page 50, line 27, leave out <practices> and insert <practitioners>

In section 86, page 50, line 30, leave out <practices> and insert <practitioners>

In section 86, page 50, line 32, leave out <practices> and insert <practitioners>

In section 86, page 50, line 33, leave out <practices> and insert <practitioners>

In section 86, page 51, leave out lines 1 and 2 and insert—

\(<\text{( ) litigation practitioners.}>\)

Description of licensed legal services providers

In section 90, page 52, line 32, leave out <or a licensed legal services provider> and insert—

\(<\text{(2B) This section does not apply in relation to the taking or using by a licensed legal services provider of a name, title, addition or description if the licensed provider has the Society’s written authority for using it.}>\)

\(<\text{(2C) For the purpose of subsection (2B), the Council are to make rules which—}>\)

\(\text{(a) set the procedure for getting the Society’s authority (and specify the conditions that the Society may impose if it gives that authority),}\)

\(\text{(b) specify the grounds on which the Society may refuse to give that authority (and require the Society to give reasons in writing if it refuses to give that authority)}>\)

Protection of branding of firm description

After section 91, insert—

\(<\text{Protection of branding of firm description}>\)

\(\text{(1) The Scottish Ministers may, after consulting—}\)

\(\text{(a) the Law Society,}\)
(b) the Faculty of Advocates,
(c) any approved regulator,
(d) any approving body, and
(e) any other person or body considered appropriate by the Scottish Ministers,

designate such terms as it considers appropriate as being restricted in use to firms of
solicitors or licensed providers or specified categories of the same.

(2) The Scottish Ministers may by regulations require approved regulators to include
provision in their practice rules as to the use of terms designated under subsection (1)."
In section 91, page 53, leave out lines 29 to 31

Rules for registration of firms

Bill Aitken

362 In section 91, page 53, line 34, at end insert—

<(ai) subsection (1A)(e)(ii) is repealed,
(bi) after subsection (1A)(e)(ii), insert—

“(iia) that any recognition granted under this section shall have effect from the date it bears, but shall expire on the 31st October next after it is issued;”>

Bill Aitken

363 In section 91, page 53, line 37, at end insert—

<(ia) after subsection (1A), insert—

“(1AA)Rules under this section may make provision requiring firms of solicitors to register with the Council and providing for their regulation and subsection (1A) shall apply for the purpose of regulating and recognising incorporated practices, subject to any necessary modifications (and firms of solicitors when registered and for as long as they are registered are in this Act referred to as “registered firms of solicitors”).

(1AB) In subsection (1AA), a “firm of solicitors” includes—

(a) a single solicitor practising under the solicitor’s own name; and
(b) a solicitor otherwise practising as a sole practitioner.”>

Citizens advice bodies

Fergus Ewing

75 After section 91, insert—

<Citizens advice bodies

(1) In section 26 of the 1980 Act, in subsection (2), after “law centre” insert “or a citizens advice body”.

(2) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—

““citizens advice body” means an association which is formed (and operates)—

(a) otherwise than for the purpose of making a profit, and
(b) with the sole or primary objective of providing legal and other advice (including information) to the public for no fee, gain or reward;”.

(3) The Scottish Ministers may by regulations modify the definition of “citizens advice body” in section 65(1) of the 1980 Act.

(4) Before making regulations under subsection (3), the Scottish Ministers must consult—
   (a) the Lord President,
   (b) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate.

Lay representation

Fergus Ewing

208 After section 91, insert—

Court of Session rules

In the Court of Session Act 1988—

(a) in section 5 (power to regulate procedure), after paragraph (ee) insert—

“(ef) to permit a lay representative, when appearing at a hearing in any category of cause along with a party to the cause, to make oral submissions to the Court on the party’s behalf.”;

(b) after section 5 insert—

“5A Rules for lay representation

(1) Rules under section 5(ef)—

   (a) are to apply to situations in which the party is not otherwise represented,
   (b) may specify other conditions by reference to which the rules are to apply.

(2) Section 5(ef) is subject to any enactment under which special provision may be made for a party to a particular type of case before the Court to be represented by a lay representative.

(3) In section 5(ef) and this section, a “lay representative” is a person who is not—

   (a) a solicitor,
   (b) an advocate, or
   (c) one having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”.

Fergus Ewing

388 After section 91, insert—

Sheriff court rules
In the Sheriffs Courts (Scotland) Act 1971—

(a) in section 32 (power of Court of Session to regulate civil procedure), in subsection (1), after paragraph (m) insert—

“(n) permitting a lay representative, when appearing at a hearing in any category of civil proceedings along with a party to the proceedings, to make oral submissions to the sheriff on the party’s behalf.”,

(b) after section 32 insert—

“32A Rules for lay representation

(1) Rules under section 32(1)(n)—

(a) are to apply to situations in which the party is not otherwise represented, 
(b) may specify other conditions by reference to which the rules are to apply.

(2) Section 32(1)(n)—

(a) does not restrict the operation of section 36(1),
(b) is subject to any enactment (apart from section 36(1)) under which special provision may be made for a party to a particular type of case before the Court to be represented by a lay representative.

(3) In section 32(1)(n) and this section, a “lay representative” is a person who is not—

(a) a solicitor, 
(b) an advocate, or 
(c) one having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”.

Guarantee fund

Bill Aitken

210A As an amendment to amendment 210, leave out line 9

Bill Aitken

210B* As an amendment to amendment 210, line 19, leave out from <an> to end of line 22 and insert <the Society as their approved regulator>

Bill Aitken

211A* As an amendment to amendment 211, line 15, after <by> insert <the Society as>

Bill Aitken

364 Before section 92, insert—

<Scottish solicitors guarantee fund
In paragraph 1 of Part 1 of Schedule 3 (the Scottish solicitors guarantee fund) to the 1980 Act—

(a) in sub-paragraph (2A) after “are” in sub-“(a)” and after “practices” insert—

“(b) partners in a registered firm of solicitors;
(c) in a case where the registered firm of solicitors is a sole practitioner, a single solicitor practicing under the solicitors own name or a solicitor otherwise practicing as a sole practitioner.”

(b) after sub-paragraph (2B) insert—

“(2BB) Subject to the provisions of this Act, there shall be paid to the Society on behalf of the Guarantee Fund by every registered firm of solicitors in respect of each year during which, or part of which, it is registered under section 34(1AA) a contribution (hereafter referred to as an “annual practice contribution”) in accordance with the scale of such contributions referred to in sub-paragraph (3).”,

(c) in sub-paragraph (3)—

(i) after “corporate contributions” insert “and the annual practice contribution”
(ii) after “directors” insert “partners”,
(iii) after “practices” insert “or registered firms of solicitors”, and
(iv) in paragraph (4), after “practice” insert “and no annual practice contribution by a registered firm of solicitors”,

(d) in sub-paragraph (5)—

(i) after “corporate contribution”)” insert “and upon every registered firm of solicitors a contribution (hereinafter referred to as a “special practice contribution”)”,
(ii) after “corporate contribution” (where it appears for the second time) insert “ and a special practice contribution”,

(c) in sub-paragraph (8), after “incorporated practice” insert “or of a registered firm of solicitors”,

Bill Aitken

366 After section 92, insert—

<Guarantee Fund

In section 43 (guarantee fund) of the 1980 Act—

(a) in subsection (2) for “the Guarantee Fund shall be held by the Society for the purpose of making grants in order to compensate persons who in the opinion of the Council suffer pecuniary loss by reason of dishonesty on the part of” substitute “where the Council are satisfied that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of any person or body mentioned in subsection (2A), the Council may make a grant or loan out of the Guarantee Fund for the purpose of relieving that loss on such terms and conditions as the Council may determine.

(2A) The persons or bodies mentioned in this subsection are—”,

366 After section 92, insert—
(b) in subsections (3), (4) and (5), after “grant” wherever appearing, insert “or loan”,

(c) after subsection (3) insert—

“(3A) Where an application for a grant or loan is made in any case which does not fall within subsection (3), the Council may, as it thinks fit, grant or refuse that application but, where it refuses the application, the Council shall give reasons to the applicant for doing so.

(3B) Where the Council grant that application, the Council shall determine the amount of the grant or loan and the terms and conditions upon which it is made.”

Bill Aitken

370 After section 92, insert—

<Loans from the guarantee fund

In Part 1 of Schedule 3 (the Scottish solicitors guarantee fund) to the 1980 Act, after paragraph 4 insert—

“4A The Council may make loans from the Guarantee Fund to judicial factors appointed by the court on the petition of the Council.”

Cap on individual claims

Fergus Ewing

212 After section 91, insert—

<Cap on individual claims

In Schedule 3 to the 1980 Act—

(a) in paragraph 4, after sub-paragraph (3) insert—

“(3A) The amount of an individual grant from the Guarantee Fund may not exceed £1.25 million.”,

(b) after paragraph 4 insert—

“5(1) The Scottish Ministers may by regulations amend the sum specified in paragraph 4(3A).

(2) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult the Council (and take account of sections 4 and (Consultation by Ministers) of the 2010 Act).

(3) The power to make regulations under sub-paragraph (1) is exercisable by statutory instrument; but a statutory instrument containing any such regulations is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”
Acting as an approved regulator

Fergus Ewing

76 Before section 92, insert—

<Acting as approved regulator

After section 1 of the 1980 Act insert—

“1A Power to act as statutory regulator

The Society may—

(a) act as an approved regulator within the meaning of Part 2 of the 2010 Act,

(b) do anything that is necessary or expedient for the purposes of doing so.”.>

Robert Brown

76A As an amendment to amendment 76, line 7, at end insert—

<( ) act as an approving body within the meaning of Part 3 of the 2010 Act,>

Council membership

Bill Aitken

389 In section 92, page 54, line 22, leave out “or appointed” and insert “, co-opted or appointed”

Bill Aitken

390 In section 92, page 54, line 27, after <election> insert <, co-option>

Bill Aitken

391 In section 92, page 54, line 30, after <election> insert <or co-option>

Bill Aitken

392 In section 92, page 54, line 34, after <electable> insert <or eligible to be co-opted>

Fergus Ewing

77 In section 92, page 55, line 3, leave out <objectives> and insert <functions>

Fergus Ewing

78 In section 92, page 55, leave out lines 4 to 27

Safeguarding interests of clients

Bill Aitken

367 After section 92, insert—
Safeguarding interests of clients in certain other cases

In section 46(3A) (safeguarding interests of clients in certain other cases) of the 1980 Act—

(a) for “apply to the court” substitute “make”,
(b) from “leave” to the end substitute “the approval of the Council.”

Law society – finance

Bill Aitken

368 After section 92, insert—

<Subscription to the Law Society>

In Schedule 1 (the Law Society of Scotland) to the 1980 Act, after paragraph 6A insert—

“6B(1) Every practice shall, for each year, pay to the Society such subscription as may be fixed from time to time by the Society in general meeting and different subscriptions may be fixed for different kinds of practices.

(2) The subscription shall be payable by the practice at the time of its application for registration or recognition.

(3) If a practice is first registered or recognised after the beginning of any year, the subscription payable by it shall be calculated by reference to the number of months remaining in that year after it is registered or recognised.

(4) In this paragraph and in paragraph 6C—

“practice” means a registered firm of solicitors or an incorporated practice; and

“year” means the period of 12 months commencing on 1 November or such other day as may be fixed by the Council.

6C(1) The Society may, in addition to the subscription imposed paragraph 6C(1), impose in respect of any year a special subscription on all practices of such amount and payable at such time and for such specified purposes as the Society may determine in general meeting.

(2) The Society may determine in general meeting that different special subscriptions may be imposed under subparagraph (1) in respect of different kinds of practices or that the special subscription shall not be payable by a kind of practice.

(3) No imposition may be made under subparagraph (1) unless a majority of members voting at the general meeting at which it is proposed has, whether by proxy or otherwise, voted in favour of its being made.”

Bill Aitken

369 After section 92, insert—

<Charging for services by the Law Society>

In Schedule 1 (the Law Society of Scotland) to the 1980 Act, after paragraph 10 insert—
“10A(1) The Society may, in accordance with a scheme of charges fixed from time to time by the Council—
(a) charge for any services which it provides in the course of carrying out its functions; and
(b) demand and recover those charges from any person to whom it provides those services.

(2) The Council may fix charges in a scheme under subparagraph (1) by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to it to be appropriate.”

Regulatory committee

Fergus Ewing

79 In section 93, page 56, line 2, at end insert—

<[(  ) Accordingly, the Council (acting in any other capacity) must not interfere unduly in the regulatory committee’s business.>>

Fergus Ewing

80 In section 93, page 56, line 3, at end insert—

<[(  ) the committee’s membership may include persons who are not members of the Council,]>

Fergus Ewing

81 In section 93, page 56, line 4, at end insert—

<[(  ) lay persons, where they are not members of the Council, are appointable to the committee if they would be appointable to the Council as non-solicitor members (see paragraph 3A(3) of Schedule 1).]>

Fergus Ewing

82 In section 93, page 56, line 7, at end insert—

<[(  ) a sub-committee—

(i) is also subject to those rules,

(ii) may be formed without the Council’s approval.>>

Fergus Ewing

83 In section 93, page 56, line 8, after <committee> insert <(or a sub-committee of it)>-

Fergus Ewing

84 In section 93, page 56, line 10, at end insert—

<[(  ) prescribe a maximum number of members that the regulatory committee may have,]>
In section 93, page 56, line 17, at end insert <(and take account of sections 4 and (Consultation by Ministers) of the 2010 Act)>

In section 93, page 56, line 29, leave out <Legal Services (Scotland) Act 2010> and insert <2010 Act>

In section 93, page 56, line 35, after <of> insert—

<(  ) setting standards of qualification, education and training,
   (  ) keeping the roll,
   (  ) administering the Guarantee Fund,
   (  )>

1980 Act - further modification

After section 93, insert—

<The 1980 Act: further modification

Keeping the solicitors roll etc.

(1) In section 7 (keeping the roll) of the 1980 Act, after subsection (2) insert—

“(2A) The roll is also to record against the name of each enrolled solicitor the address of the place of business of that solicitor (as given under subsection (2) of that section).”.

(2) In section 12A (keeping the register) of the 1980 Act, after subsection (2) insert—

“(2A) The register is also to record against the name of each lawyer entered on it the address of the place of business of that lawyer and related information (as given under section 12B(1)).”.

Removal from the roll etc.

(1) In section 9 (removal of name from roll on request) of the 1980 Act—

(a) the existing text becomes subsection (1),
(b) in subsection (1) (as so numbered), the words from “on” to “hand,” are repealed,
(c) after subsection (1) (as so numbered) insert—

“(2) But the Council are required to remove the name or annotation only if they are satisfied that—
(a) the solicitor has made adequate arrangements with respect to the business which the solicitor then has in hand, and
(b) it is otherwise appropriate to do so.”.

(2) In section 12C (removal of name from register on request) of the 1980 Act—

(a) the existing text becomes subsection (1),
(b) in subsection (1) (as so numbered), the words from “, on” to “hand,” are repealed,
(c) after subsection (1) (as so numbered) insert—

“(2) But the Council are required to remove the name or annotation only if they are satisfied that—

(a) the solicitor has made adequate arrangements with respect to the business which the solicitor then has in hand, and
(b) it is otherwise appropriate to do so.”.

Fergus Ewing

90 After section 94, insert—

<Notification if suspension lifted

(1) In section 19 (further provisions relating to suspension of practising certificates) of the 1980 Act, after subsection (5A) insert—

“(5B) On the occurrence of any of the circumstances mentioned in subsections (4) to (5A), the solicitor concerned must notify the Council in writing (and without delay).”.

(2) In section 24G (further provisions relating to suspension of registration certificate) of the 1980 Act, after subsection (4) insert—

“(4A) On the occurrence of any of the circumstances mentioned in subsections (2) to (4), the lawyer concerned must notify the Council in writing (and without delay).”.

Representative functions of the Law Society

James Kelly

373 After section 93, insert—

<Representative functions of the Law Society

(1) The 1980 Act is amended as follows.

(2) In section 3(1) (establishment and functions of Council of the Law Society), at the beginning insert “Subject to section 3C,”.

(3) In section 3A (discharge of functions of Council of the Law Society), in subsection (11), after “section 3B” insert “and section 3C”.

(4) After section 3B (regulatory committee) insert—

“3C The representative functions of the Society
(1) The representative functions of the Society shall not vest in, or be exercised by, the Council but shall be exercised on behalf of the Society by a Representative Council.

(2) Membership of the Representative Council shall be elected in accordance with the provisions of the scheme made under paragraph 2(a) of Schedule 1.

(3) Only solicitors may be elected to the Representative Council.

(4) The Chair of the Representative Council shall be the General Secretary of the Society who shall be elected in accordance with the provisions of the scheme made under paragraph 2(a) of Schedule 1.

(5) The General Secretary of the Society may not, while holding that office, serve as President of the Society.

(6) The Representative Council may arrange for any of its functions (other than excepted functions) to be discharged on their behalf by—

(a) a committee of the Representative Council;
(b) a sub committee of such a committee; or
(c) an individual (whether or not a member of the Society’s staff).

(7) The Representative Council may, in exercise of the power conferred by subsection (6), impose restrictions or conditions on the body or person by whom the function is to be discharged.

(8) An arrangement made under this section may identify an individual by name, or by reference to an office or post which the individual holds.

(9) An arrangement under this section for the discharge of any of the functions of the Representative Council may extend to any of the functions of the Society which is exercisable by the Representative Council.

(10) For the purposes of this section, “the representative functions of the Society” means the functions of the Society in carrying out the objects of the Society in promoting the interests of the solicitors’ profession in Scotland under section 1(2)(a).”

(5) In Schedule 1 (the Law Society of Scotland)—

(a) in paragraph 2(a), after “the Council” insert “and the Representative Council”;
(b) in paragraph 2(d), after “sub-committees” insert “of the Council and of the Representative Council”; and
(c) in paragraph 3 after “Council” (wherever it appears) insert “or Representative Council”.

Complaints to tribunal

Bill Aitken

374 After section 94, insert—

<Complaints to Tribunal

(1) Section 51 of the 1980 Act (complaints to Tribunal), is amended as follows.
(2) In subsection (1A) for “in respect of” to the end substitute “made the Council (whether or not on behalf of any other person) against—

(a) a solicitor, whether or not the solicitor had a practising certificate in force at the time the conduct complained of occurred and notwithstanding that subsequent to that time the solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;

(b) a firm of solicitors, whether or not since the time of the conduct complained of there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner or the firm has ceased to practise;

(c) an incorporated practice, whether or not since the time of the conduct complained of there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) or has been wound up;

(d) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 and includes any such person, whether or not the person had acquired the right at the time of the conduct complained of and notwithstanding that subsequent to that time the person no longer has the right;

(e) a conveyancing practitioner and includes any such practitioner, whether or not registered at the time of the conduct complained of and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

(f) an executry practitioner and includes any such practitioner, whether or not registered at the time of the conduct complained of and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

and any reference in Part IV to any of those persons or practices mentioned in paragraphs (a) to (f) shall be construed accordingly.”

(3) In subsection (2), after “that” insert—

“(a) a solicitor may have been guilty of professional misconduct or unsatisfactory professional conduct;

(b) a solicitor or”.>
Information about legal services

Fergus Ewing

379 In section 96, page 57, line 27, after <Scotland> insert <(including by reference to any relevant factor relating particularly to rural or urban areas)>.

Fergus Ewing

91 Leave out section 97 and insert—

<Information about legal services

After section 35A of the 1986 Act insert—

“35AA Information about legal services

(1) For the purpose mentioned in subsection (4)(a), each of the bodies mentioned in subsection (3)(a), (b) and (c) must provide the Board with such information as the Board may reasonably require.

(2) For the purpose mentioned in subsection (4)(b)—

(a) each of the bodies mentioned in subsection (3)(a) and (b) must—

(i) inform the Board whenever it upholds a conduct complaint about a solicitor or (as the case may be) an advocate, and

(ii) give the Board a summary of the relevant facts.

(b) the body mentioned in subsection (3)(d) must—

(i) inform the Board whenever it upholds a services complaint about a solicitor or an advocate, and

(ii) give the Board a summary of the relevant facts.

(3) The bodies are—

(a) the Law Society,

(b) the Faculty of Advocates,

(c) the Scottish Court Service,

(d) the Scottish Legal Complaints Commission.

(4) The purposes are the Board’s exercise of its functions under—

(a) section 1(2A),

(b) section 31(3).

(5) In subsection (2), a reference to a services or a conduct complaint is to be construed in accordance with Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007.”>
2007 Act – minor amendments

Fergus Ewing 92 In section 98, page 58, line 13, leave out <29(9),> and insert <29—

( ) in subsection (4), after “members” insert “, and the Scottish Ministers,”,

( ) in subsection (9),>

Fergus Ewing 93 After section 98, insert—

<The 2007 Act: further provision

(1) In section 78 (ancillary provision) of the 2007 Act, after subsection (1) insert—

“(1A) The Scottish Ministers may make such further provision as, having regard to
the effect of the Legal Services Act 2007 so far as concerning the subject
matter of Parts 1 and 2 of this Act (and applying in Scotland), they consider
necessary or expedient in connection with this Act or any related provisions of
the 1980 Act.”.

(2) In section 79 (regulations or orders) of the 2007 Act, in subsection (3)(c)(i), after
“section 78(1)” insert “or (1A)”.

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