Legal Services (Scotland) Bill

2nd 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 second 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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Role of the Lord President

Fergus Ewing

4 In section 5, page 3, line 20, after <their> insert <(or the Lord President’s)>

Robert Brown

Supported by: Bill Aitken

236 In section 6, page 3, line 28, after <may> insert <, with the consent of the Lord President,>

Fergus Ewing

5 In section 6, page 3, line 30, at beginning insert <for regulating licensed legal services providers in accordance with this Part,>

Fergus Ewing

6 In section 6, page 3, leave out line 31 and insert—

<(i) the necessary expertise as regards the provision of legal services (including as deriving from that of the persons within it),>

Fergus Ewing

7 In section 6, page 3, leave out line 34

Bill Aitken

238 In section 6, page 4, line 9, after <may> insert <, with the consent of the Lord President,>

Fergus Ewing

8 In section 6, page 4, line 10, at end insert—

<(2A) The Scottish Ministers are to impose under subsection (2) such particular conditions relating to the expertise mentioned in subsection (1)(a)(i) as are reasonably sought by the Lord President when consulted under section (Pre-approval consideration)(1).>

Fergus Ewing

9 In section 6, page 4, line 10, at end insert—

<( ) The Scottish Ministers may remove or vary any conditions imposed under subsection (2)—

(a) after consulting the approved regulator, and

(b) where the conditions arose by virtue of subsection (2A), with the Lord President’s agreement.>

Bill Aitken

240 In section 6, page 4, line 10, at end insert—
<(2B) The Scottish Ministers may, with the consent of the Lord President, amend, add or delete any conditions imposed under subsection (2).>

**Robert Brown**

244 In section 6, page 4, line 33, at end insert—

<( ) Before making regulations under subsection (7), the Scottish Ministers must consult the Lord President.>

**Fergus Ewing**

14 After section 6, insert—

<Lord President’s agreement

(1) Despite section 6(1), the Scottish Ministers must not approve the applicant as an approved regulator unless the Lord President agrees to its being approved as such.

(2) For the purpose of subsection (1), that agreement may be withheld only if the Lord President is not satisfied that the applicant has the expertise mentioned in section 6(1)(a)(i).>

**Robert Brown**

Supported by: Bill Aitken

272 In section 22, page 11, line 37, after <may> insert <, with the consent of the Lord President,>

**Authorisation to act**

**Fergus Ewing**

15 In section 7, page 5, line 14, leave out subsections (6) to (9)

**Fergus Ewing**

16 In section 7, page 5, leave out line 33

**Fergus Ewing**

17 In section 7, page 5, line 34, leave out subsection (11)

**Fergus Ewing**

18 After section 7, insert—

<Request for authorisation

(1) A request for authorisation under section 7 may be—

(a) made at any reasonable time (including at the same time as applying for approval under section 6),

(b) withdrawn by the approved regulator (or applicant) at any time by giving the Scottish Ministers written notice to that effect.

(2) The Scottish Ministers must, with reasons, notify the approved regulator (or applicant) if they intend to—

(a) withhold their authorisation, or
(b) impose conditions under section 7(4)(b).

(3) If notification is given to the approved regulator (or applicant) under subsection (2), 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.

(4) The approved regulator (or applicant) must provide the Scottish Ministers with such information as they may reasonably require for their consideration of its request for their authorisation.

(5) In section 7 and this section, a reference to authorisation means initial or renewed authorisation.

Compensation

Fergus Ewing
169 In section 8, page 6, line 7, at end insert—
   <( ) the compensation rules (see sections (Compensation rules: general) and (More about compensation rules)),>

Robert Brown
261 In section 14, page 8, line 36, at end insert—
   <( ) compensation (see section (compensation)),>

Fergus Ewing
170 After section 19, insert—
   <Compensation arrangements

Choice of arrangements

(1) An approved regulator must proceed with either option A or option B as regards a fund (a compensation fund) for making good such relevant losses as may be suffered by reason of dishonesty on the part of its licensed legal services providers.

(2) Option A is for the approved regulator to maintain a compensation fund (of its own) in relation to its licensed providers.

(3) If option A is proceeded with, the compensation fund is to be—
   (a) held by the approved regulator for such purpose as corresponds to the purpose for which the Guarantee Fund is held under section 43(2)(c) of the 1980 Act in relation to licensed providers,
   (b) administered by it in such way as corresponds to the administration of the Guarantee Fund in accordance with section 43(3) to (7) of, and Part I of Schedule 3 to, the 1980 Act (so far as applicable in relation to licensed providers).

(4) Option B is for the approved regulator, by not maintaining a compensation fund as mentioned in option A, to cause the Guarantee Fund to be administered as respects its licensed providers.
(5) For the purpose of option B, see section 43(2)(c) to (8) of, and Part I of Schedule 3 to, the 1980 Act.

(6) As soon as it has decided which of options A and B to proceed with, the approved regulator must inform the Law Society of its decision.

Fergus Ewing

171 After section 19, insert—

<Compensation rules: general

(1) For the purposes of this Part, the compensation rules are rules in pursuance of (as the case may be)—

(a) option A in section (Choice of arrangements), or
(b) option B in that section.

(2) In pursuance of option A, the rules must—

(a) state—

(i) the purpose of the approved regulator’s compensation fund,
(ii) as a minimum, the monetary amount to be contained in that fund,
(b) describe the way in which that fund is to be administered by the approved regulator,
(c) specify the criteria for qualifying for payment out of that fund,
(d) provide for the procedure for—

(i) making claims for such payment,
(ii) determining such claims,
(e) require the making of contributions to that fund by a licensed provider in accordance with the relevant scale of annual contributions fixed by virtue of section (Choice of arrangements)(3)(b),
(f) make provision for the destination (or distribution) of that fund in the event that the approved regulator ceases to operate.

(3) In pursuance of option B, the rules must require the making of contributions to the Guarantee Fund by a licensed provider in accordance with the relevant scale of annual contributions fixed under paragraph 1(3) of Schedule 3 to the 1980 Act.>

Robert Brown

171A As an amendment to amendment 171, line 24, at end insert <but only if these have been approved by the Council of the Law Society after a report confirming the fairness of the arrangements has been obtained from an independent actuary.>

Fergus Ewing

172 After section 19, insert—

<More about compensation rules

(1) Compensation rules may include such further compensation arrangements as to licensed providers for which provision is (in the approved regulator’s opinion) necessary or expedient.
(2) The Scottish Ministers may by regulations make further provision about compensation arrangements as to licensed providers, including (in particular)—
(a) for the content of compensation rules,
(b) in connection with a compensation fund, for functions of approved regulators and licensed providers,
(c) so far as concerning the relevant scale of annual contributions to the Guarantee Fund referred to in paragraph 1(3) of Schedule 3 to the 1980 Act, for functions of the Law Society.

(3) In sections (Choice of arrangements) and (Compensation rules: general) and this section, a reference to the Guarantee Fund is to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).

Robert Brown
268 After section 19, insert—

<Compensation>
Practice rules must—
(a) require licensed providers to keep in place sufficient arrangements for compensating persons who, in the opinion of the approved regulator, suffer pecuniary loss by reason of dishonesty on the part of that provider in providing legal services,
(b) include provision for ensuring that such persons may be compensated even although the licensed provider no longer provides such services or is no longer in existence.

Fergus Ewing
210 After section 91, insert—

<Guarantee Fund>
Use of Guarantee Fund
In section 43 (Guarantee Fund) of the 1980 Act—
(a) in subsection (2)—
(i) the word “or” immediately preceding paragraph (b) is repealed,
(ii) after paragraph (b) insert “; or
(c) any licensed legal services provider or any person within it, even if—
(i) the Society is not its approved regulator, or
(ii) subsequent to the act concerned it has ceased to operate.”,
(b) in subsection (3), after paragraph (cc) insert—
“(cd) to a licensed provider or an investor therein in respect of a loss suffered by reason of dishonesty to which subsection (2)(e) relates in connection with the licensed provider’s provision of legal services (with the same meaning as for Part 2 of the 2010 Act);”,
(c) in subsection (7)(c), after “incorporated practice” insert “or a licensed provider”,
(d) after subsection (7) insert—
“(8) In the case of licensed providers, this section and Part I of Schedule 3 apply in relation to (and only to) such licensed providers as are regulated by an approved regulator that in furtherance of section (Choice of arrangements)(4) of the 2010 Act does not maintain a compensation fund as referred to in that section.

(9) In this section and paragraph 1 of Schedule 3—

“approved regulator”,

“investor”,

are to be construed in accordance with Part 2 of the 2010 Act.”.>

Fergus Ewing

211 After section 91, insert—

<Contributions to the Fund

(1) In Schedule 3 (the Scottish Solicitors Guarantee Fund) to the 1980 Act, in paragraph 1—

(a) in sub-paragraph (2A)—

(i) the words “directors of incorporated practices” become head (a),

(ii) after that head (as so numbered) insert “, or

(b) investors in licensed legal services providers.”,

(b) in sub-paragraph (2B)—

(i) the words from “by every” to the end become head (a),

(ii) in that head (as so numbered), for “scale of such” substitute “relevant scale of annual corporate”,

(iii) after that head (as so numbered) insert “, and

(b) by every licensed provider in respect of each year during which or part of which it operates as such under the licence issued by its approved regulator a contribution (also an “annual corporate contribution”) in accordance with the relevant scale of annual corporate contributions referred to in sub-paragraph (3).”,

(c) in sub-paragraph (3)—

(i) for “scale” in the first place where it occurs substitute “scales”,

(ii) the words from “, which scale” to the end are repealed,

(d) after sub-paragraph (3) insert—

“(3A) The scales of annual corporate contributions—

(a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—

(i) in the case of incorporated practices, the number of solicitors that they have as directors or employees,

(ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,
(b) may otherwise make different provision as between incorporated practices and licensed providers.”,

(c) in sub-paragraph (4), after “incorporated practice” insert “or a licensed provider”,

(f) in sub-paragraph (5), after “incorporated practice” insert “and licensed provider”,

(g) in sub-paragraph (8), after “incorporated practice” insert “or a licensed provider”.

(2) In Schedule 3 to the 1980 Act, in paragraph 3(2)—

(a) for “and incorporated practices” substitute “, incorporated practices and licensed providers”,

(b) for “or incorporated practice or practices” substitute “, incorporated practice or practices or licensed provider or providers”.>

**Regulatory schemes**

**Robert Brown**

247 In section 8, page 6, line 8, at end insert—

<(  ) include provision to ensure that legal services provided by the licensed provider are adequately supervised to ensure that they are provided competently and effectively,

(  ) include provision to maintain a record of any disciplinary action taken against the Head of Legal Services or any designated person within the licensed provider,>
Regulatory conflicts

Fergus Ewing
19 In section 9, page 6, line 29, leave out <to be in the regulatory scheme by section 8(2)(b)> and insert <by section 8(2)(b) to be in the regulatory scheme>

Robert Brown
Supported by: Bill Aitken
252 In section 9, page 7, line 1, after <may> insert <, with the consent of the Lord President,>.

Fergus Ewing
20 In section 9, page 7, line 2, leave out <that> and insert <(such as>

Reference to non-solicitor investors

Fergus Ewing
98 In section 10, page 7, line 15, leave out <outside> and insert <non-solicitor>

Fergus Ewing
101 In section 17, page 10, line 9, leave out <outside> and insert <non-solicitor>

Fergus Ewing
103 In section 49, page 27, line 19, leave out <outside> and insert <non-solicitor>

Fergus Ewing
105 In section 49, page 27, line 24, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing
107 In section 49, page 27, line 31, leave out <outside> and insert <non-solicitor>

Fergus Ewing
109 In section 50, page 28, line 3, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing
111 In section 50, page 28, line 18, leave out <An outside> and insert <A non-solicitor>

Fergus Ewing
112 In section 50, page 29, line 5, leave out subsection (4)

Fergus Ewing
115 In section 51, page 29, line 14, leave out <An outside> and insert <A non-solicitor>

Fergus Ewing
116 In section 51, page 29, line 21, leave out <An outside> and insert <A non-solicitor>
In section 52, page 30, leave out lines 15 to 18 and insert—

<(b) a “non-solicitor investor” in a licensed provider is an investor who is not entitled to practise—
   (i) as a solicitor,
   (ii) in England and Wales or Northern Ireland, as a solicitor (outwith the meaning for this Act), or
   (iii) as a registered European lawyer.>

In schedule 8, page 76, line 14, leave out <outside> and insert <non-solicitor>

In schedule 8, page 76, line 23, leave out <outside> and insert <non-solicitor>

In schedule 8, page 76, line 24, leave out <an outside> and insert <a non-solicitor>

In schedule 8, page 76, line 37, leave out <an outside> and insert <a non-solicitor>

In schedule 8, page 77, line 1, leave out <an outside> and insert <a non-solicitor>

In schedule 8, page 77, line 4, leave out <an outside> and insert <a non-solicitor>

In schedule 8, page 77, line 4, leave out <(including>

In schedule 8, page 77, leave out lines 6 and 7 and insert—

<(ii) because the person, having ceased to be entitled to practise as mentioned in section 52(4)(b) (while remaining as an investor), comes within the definition there.>

In schedule 8, page 77, line 12, leave out <(1)(c)> and insert <(1)(c)(i)>

In schedule 8, page 77, line 14, at end insert—

<(3A) In a case falling within sub-paragraph (1)(c)(ii), the licensed provider must (as soon as practicable) notify the approved regulator of the fact.>
Fergus Ewing
131 In schedule 8, page 77, line 18, leave out <or (3)> and insert <, (3) or (3A)>

Fergus Ewing
145 In section 67, page 40, line 12, leave out <outside> and insert <non-solicitor>

Fergus Ewing
146 In section 68, page 41, line 15, leave out <an outside> and insert <a non-solicitor>

Fergus Ewing
167 In schedule 9, page 80, line 9, leave out <outside> and insert <non-solicitor>

**Exemption from fitness test**

Fergus Ewing
21 In section 10, page 7, line 15, leave out <(including for section 49(2))>

Fergus Ewing
99 In section 10, page 7, line 22, at end insert—

<(  ) See also sections 43(6)(b), 45(3A), 49(2), (Exemption from fitness test)(3) and 52(2)(b)
and paragraph 3A(2) of schedule 8 (as well as sections 11 and 12).>

Fergus Ewing
108 After section 49, insert—

<Exemption from fitness test

(1) Section 49(1) is subject to this section.

(2) The approved regulator need not act as required by that section in relation to any
exemptible investor in the licensed provider.

(3) Licensing rules must explain—

(a) any circumstances in which the approved regulator proposes to rely on subsection
(2),

(b) any threshold below the percentage specified in subsection (4) by reference to
which it proposes to rely on subsection (2),

(c) where it proposes to rely on subsection (2), its reasons.

(4) In subsection (2), an “exemptible investor” is an investor who has less than a 10% stake
in the total ownership or control of the licensed provider.>

Fergus Ewing
132 In schedule 8, page 77, line 23, at end insert—

<Exemption from notification requirements

3A(1) An approved regulator may in relation to any exemptible investor in a licensed provider
waive the requirements to give it information (or notification) under paragraphs 1 and 3.
(2) Licensing rules must explain—
   (a) any circumstances in which the approved regulator proposes to rely on sub-
       paragraph (1),
   (b) any threshold below the percentage specified in subsection (3) by reference to
       which it proposes to rely on sub-paragraph (1),
   (c) where it proposes to rely on sub-paragraph (1), its reasons.

(3) In sub-paragraph (1), an “exemptible investor” is (as the case may be)—
   (a) an investor who has less than a 10% stake in the total ownership or control of the
       licensed provider, or
   (b) a person whose intended acquisition of an interest in the licensed provider is of
       less than a 10% stake in the total ownership or control of the licensed provider.

Licensing rules

Robert Brown

254 In section 10, page 7, line 22, at end insert—
   <( ) Rules made in pursuance of subsection (1)(c) must include provision for licences to be
   subject to renewal after a period of one year from the date of issue, unless previously
   revoked or suspended.>

Fergus Ewing

22 In section 11, page 7, line 24, leave out <made in pursuance of section 10(1)(a)>

Robert Brown

256 In section 11, page 7, line 34, at end insert—<, or
   ( ) reducing standards of competent service within the legal services market,>

Fergus Ewing

23 In section 12, page 8, line 10, after <other> insert <relevant>

Practice rules

Robert Brown

260 In section 14, page 8, line 33, at end insert—
   <( ) avoidance of conflict of interest,>

Fergus Ewing

24 In section 14, page 8, line 34, leave out <(including for section 45(4))>

Robert Brown

262 In section 14, page 9, line 7, at end insert—
Rules made in pursuance of subsection (1)(f) may allow the approved regulator to take one or more of the following measures, in relation to a licensed provider, if it considers that to be appropriate in the circumstances of the case—

(a) setting performance targets,
(b) directing that action be taken,
(c) publishing a statement of censure,
(d) imposing a financial penalty in accordance with section 15,
(e) amending the condition of its license,
(f) revoking its licence.

Fergus Ewing

25 In section 15, page 9, line 21, leave out from <approved regulator> to end of line 22 and insert <Scottish Ministers (but the approved regulator may collect it on their behalf).>

Fergus Ewing

26 In section 16, page 9, line 36, at end insert <specified in the scheme>

Ban for improper behaviour

Fergus Ewing

100 In section 14, page 9, line 13, at end insert—

<( ) See also sections 43(6)(a), 45(4) and (Ban for improper behaviour)(4) (as well as sections 15 to 19).>

Fergus Ewing

106 In section 49, page 27, line 29, at end insert—

<( ) But the approved regulator need not act as required by licensing rules made under subsection (2)(b) if, by such time as it may reasonably appoint, the licensed provider demonstrates to it that (following disqualification as required by section (Ban for improper behaviour)(1) or otherwise) the investor no longer has the relevant interest.>

Fergus Ewing

114 After section 50, insert—

<Ban for improper behaviour

(1) Where an approved regulator determines that a non-solicitor investor in a licensed legal services provider has contravened section 51(1) or (2), the approved regulator must disqualify the investor from having an interest in the licensed provider.

(2) A disqualification under subsection (1)—

(a) may be—

(i) without limit of time, or

(ii) for a fixed period,
(b) extends so as to apply in relation to every licensed provider (including a licensed provider that is subject to the regulation of a different approved regulator).

(3) Before disqualifying an investor under subsection (1), the approved regulator must give the investor 28 days (or such longer period as it may allow) to—
   (a) make representations to it,
   (b) take such steps as the investor may consider expedient.

(4) Practice rules must—
   (a) set procedure (which the approved regulator is to follow) for imposing a disqualification under subsection (1),
   (b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that subsection.

(5) A person who is disqualified under subsection (1) may appeal against the disqualification—
   (a) to the sheriff,
   (b) within the period of 3 months beginning with the date on which the disqualification is imposed.

Fergus Ewing
117 In section 51, page 29, line 22, after <interfere> insert <improperly>

Fergus Ewing
147 In section 68, page 41, line 15, at end insert <, or
   ( ) disqualified under section (Ban for improper behaviour)(1) (that is, from having an interest in a licensed provider).

Fergus Ewing
148 In section 68, page 41, line 20, at end insert <or (as the case may be) disqualification>

Fergus Ewing
149 In section 68, page 41, line 21, at end insert <or (as the case may be) disqualification>

Fergus Ewing
150 In section 68, page 41, line 21, at end insert—
   <( ) A list kept under this section must not include information relating to a person in respect of whom the determination or (as the case may be) disqualification—
   (a) has been reversed on appeal, or
   (b) otherwise, no longer applies.>
Regulatory functions

Fergus Ewing

27 In section 23, page 12, line 10, leave out <any such functions that the approved regulator has as regards> and insert <the approved regulator’s functions of regulating>

Robert Brown

274 In section 23, page 12, line 20, leave out from <but> to the end of line 23

Fergus Ewing

28 In section 24, page 12, line 25, after <assess> insert <the performance of>

Fergus Ewing

29 In section 24, page 13, line 14, after <delegate> insert <any of>

Robert Brown

Supported by: Bill Aitken

278 In section 26, page 13, line 23 after <may> insert , with the consent of the Lord President,

Fergus Ewing

30 In section 26, page 13, line 24, leave out <to be necessary or expedient for them to have> and insert <appropriate>

Bill Aitken

279 In section 26, page 13, leave out line 28

Fergus Ewing

31 In section 27, page 13, line 32, leave out <to it, or>

Performance of approved regulators

Fergus Ewing

32 Before section 28, insert—

<Review of own performance>

(1) An approved regulator must review annually its performance.

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

(a) the approved regulator’s compliance with section 62,

(b) the exercise of its regulatory functions,

(c) the operation of its internal governance arrangements,

(d) its compliance with any measures applying to it by virtue of section 29(4)(a) or (b).

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

(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 regulators’ performance,
   (b) reports on reviews of their performance.

Fergus Ewing
33 In section 28, page 14, line 7, leave out <its duties under>

Robert Brown
Supported by: Bill Aitken
283 In section 29, page 14, line 37, at end insert—
   <( )> The Scottish Ministers may only take the measures mentioned in subsection (4)(a), (b), (e) and (f) with the consent of the Lord President.

Robert Brown
Supported by: Bill Aitken
284 In section 29, page 14, line 38 after <may> insert <, with the consent of the Lord President,>

Fergus Ewing
34 In section 29, page 15, line 4, at end insert—
   <( )> Before making regulations under subsection (6), the Scottish Ministers must consult every approved regulator.

Bill Aitken
288 In schedule 2, page 63, leave out line 38

Bill Aitken
289 In schedule 2, page 64, line 1, leave out <other>

Bill Aitken
291 In schedule 3, page 65, line 19, after <may> insert <, with the consent of the Lord President,>

Bill Aitken
292 In schedule 3, page 65, leave out line 25

Bill Aitken
293 In schedule 3, page 65, line 26, leave out <other>

Fergus Ewing
35 In schedule 4, page 69, line 15, leave out <application is determined> and insert <Scottish Ministers notify the approved regulator of their determination of the application>
On an appeal under this paragraph—

(a) the Court may—

(i) uphold, vary or quash the decision that is the subject of the appeal,

(ii) make such further order as is necessary in the interests of justice,

(b) the Court’s determination is final.

In schedule 4, page 70, line 1, leave out <period of>

In schedule 6, page 73, leave out lines 24 to 33

After section 29, insert—

Scottish Ministers must make a report to the Parliament annually on the anniversary of this section coming into force as to the extent to which the regulatory activities of approved regulators have, in the view of Scottish Ministers—

(a) affected,

(b) prevented,

(c) restricted,

(d) distorted, or

(e) increased

competition and quality of service in the legal services market, with particular regard to any policy statements issued by approved regulators under section 63.

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,
Robert Brown

38A As an amendment to amendment 38, line 2, after <Scottish Ministers> insert <reasonably>

Bill Aitken

307 In section 35, page 17, line 33, after <only> insert <with the consent of the Lord President and>

Licensed providers

Fergus Ewing

39 In section 36, page 18, line 13, after <a> insert <valid>

Fergus Ewing

40 In section 36, page 18, line 14, 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

41 In section 37, page 19, leave out lines 13 and 14 and insert—

<( ) a litigation practitioner,>

Fergus Ewing

42 In section 37, page 19, line 17, leave out <further provision about> and insert—

<(i) provision specifying other categories of entity that are, or are not, eligible to be a licensed provider,

(ii) further provision about criteria for>

Fergus Ewing

43 In section 37, page 19, line 21, at end insert—

<( ) Before making regulations under subsection (6)(b), the Scottish Ministers must consult every approved regulator.>

Fergus Ewing

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

<( ) section 37(6)(a)(i).>

Fergus Ewing

95 In section 101, page 60, line 7, at end insert—

<( ) a reference to a litigation practitioner is to a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act.>

Fergus Ewing

96 In schedule 9, page 79, line 17, at end insert—

<litigation practitioner>
Ownership of licensed providers

Bill Aitken

310 In section 37, page 18, line 24, leave out <36(2)> and insert <section (majority ownership)(1)(c)>

Bill Aitken

311 In section 37, page 18, line 27, leave out <36(2)> and insert <section (majority ownership)(1)(c)>

Bill Aitken

312 In section 37, page 18, leaves out lines 32 to 34

Bill Aitken

313 In section 37, page 18, line 35, leave out <But> and insert <Subject to section (majority ownership)(1),>

Bill Aitken

314 In section 37, page 19, line 17, after <make> insert <, subject to section (majority ownership)(1),>

Bill Aitken

315 In section 37, page 19, line 19, leave out <36(2)> and insert <(majority ownership)(1)(c)>

Robert Brown
Supported by: Bill Aitken

317 After section 37, insert—

<Majority ownership>

(1) An entity is eligible to be a licensed provider only if—

(a) at least 51% of the entity is owned, managed and controlled by the persons or bodies specified in any one of more of the following sub-paragraphs—

(i) solicitors,
(ii) firms of solicitors or incorporated practices, or
(iii) members of other regulated professions,

(b) it is not wholly owned, managed and controlled by solicitors, firms of solicitors or incorporated practices, and

(c) it has within it, for the provision of legal services, at least one solicitor who holds a practising certificate that is free from conditions (as construed by reference to section 15(1) of the 1980 Act).

(2) In subsection (1)(a)(iii), a “regulated profession” means a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications.>
378 After section 99, insert—

<Further modification>

(1) The Scottish Ministers may by regulations made by statutory instrument—

(a) amend the percentage specified in section (Majority ownership)(1)(a), or

(b) repeal section (Majority ownership).

(2) But regulations may be made under subsection (1) only if the Scottish Ministers believe that the effect of the amendment or (as the case may be) repeal would be—

(a) compatible with the regulatory objectives, and

(b) appropriate in any other relevant respect.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) the Lord President,

(b) the Law Society,

(c) every approved regulator,

(d) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,

(e) such other person or body as they consider appropriate.

(4) A statutory instrument containing regulations under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.>

Will writers

Fergus Ewing

173 In section 37, page 19, line 15, after <agent> insert <or will writer>

Fergus Ewing

179 In section 57, page 33, line 32, after <agent> insert <or will writer>

Fergus Ewing

180 In section 58, page 34, line 31, after <agent> insert <or will writer>

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.>
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.>

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

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

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

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

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.>

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

In section 50, page 28, line 7, leave out <(including associations),> and insert—
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>
In section 52, page 30, line 9, leave out subsection (3)

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

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.>

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

< ( ) acting as a litigation practitioner,>

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

Fergus Ewing

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

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

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.>

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

< ( ) section 52(2A).>

Discontinuance of services

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

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

Professional practice

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

< ( ) acting as a litigation practitioner,>

In section 57, page 34, line 11, at end insert—

< ( ) the Court’s determination is final.>

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

< ( ) acting as a litigation practitioner,>

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

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

Complaints about and levy payable by approved regulators

Fergus Ewing

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).>
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.

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

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

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.

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.

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.

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.

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.

Section 57C(1) is subject to subsection (1).
Aperture procedure

Fergus Ewing

66 After section 70, insert—

<Aperture 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—

<Aperture 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.>