4th 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 fourth 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.**

Groupings of amendments

**Acting as an approved regulator**
76, 76A

**Council membership**
389, 390, 391, 392, 77, 78

**Safeguarding interests of clients**
367

**Law society – finance**
368, 369

**Regulatory committee**
79, 80, 81, 82, 83, 84, 85, 86, 87

**1980 Act - further modification**
88, 89, 90

**Representative functions of the Law Society**
373

**Complaints to tribunal**
374, 375

**Information about legal services**
379, 91

**2007 Act – minor amendments**
92, 93
Amendments already debated

Reference to non-solicitor investors
With 98 – 167

Licensed providers
With 39 – 94, 95, 96

Ownership of licensed providers
With 310 – 378

More about investors
With 174 – 214

Confirmation services – further requirements
With 181 – 166, 168

Will writing services
With 184 – 213, 215, 216, 217, 218

Guarantee fund
With 210A – 364, 366, 370
Amendments in debating order

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

\(<(\ )\) prescribe a maximum number of members that the regulatory committee
may have,>
(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,”.
In section 3A (discharge of functions of Council of the Law Society), in subsection (11), after “section 3B” insert “and section 3C”.

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).”

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
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”.

Procedure on complaints and appeals to Tribunal

(1) The 1980 Act is amended as follows.
(2) In section 52 (procedure on complaints and appeals to Tribunal), after subsection (3) insert—

“(4) For the avoidance of doubt, rules made by the Tribunal under subsection (2) may provide for the functions of the Tribunal to be exercised on behalf of the Tribunal, in relation to a particular case or part of a case—

(a) by any particular tribunal constituted in accordance with paragraph 5 of Schedule 4 to deal with that case or part;

(b) by the chairman or vice chairman of the Tribunal other than the functions of hearing and determining the merits of any case.”>

**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)”.>