Legal Services (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

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Amendments marked * are new (including manuscript amendments) or have been altered.

**Section 5**

**Fergus Ewing**

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

**Robert Brown**

233 In section 5, page 3, line 26, at end insert—

<7> But the fees charged must not exceed the cost incurred by the Scottish Ministers in determining whether an applicant should be approved under section 6 as an approved regulator or, as the case may be, whether an approved regulator should be authorised under section 7 to exercise any of the approved regulator’s regulatory functions.>

**Section 6**

**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—

<5> the necessary expertise as regards the provision of legal services (including as deriving from that of the persons within it),>
Robert Brown

237 In section 6, page 3, line 31, at end insert—

<( ) a thorough knowledge and understanding of the regulatory objectives and the professional principles contained in sections 1 and 2,>

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.>

Robert Brown

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

<( ) Conditions under subsection (2) may, without prejudice to their generality, include conditions which may—

(a) restrict the approval of the applicant by reference to particular categories of—

(i) licensed providers,
(ii) legal services,

(b) be given either—

(i) without limit of time, or
(ii) for a fixed period of at least 3 years.>

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).>

Fergus Ewing

10 In section 6, page 4, line 11, leave out subsections (3) to (6)

Robert Brown

241 In section 6, page 4, line 11, after <regulator> insert <and what conditions, if any, to impose under subsection (2) or amend, add or delete under subsection (2B).>

Bill Aitken

242 In section 6, page 4, leave out line 13

Robert Brown

243 In section 6, page 4, line 22, at end insert—
<together with, in either case, their reason for doing so.>

Fergus Ewing

11 In section 6, page 4, line 31, at beginning insert <in relation to capability to act as an approved regulator,>

Fergus Ewing

12 In section 6, page 4, leave out line 33

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.>

After section 6

Fergus Ewing

13 After section 6, insert—

<Pre-approval consideration>

(1) Before deciding whether or not to approve the applicant as an approved regulator under section 6, 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,
(c) such other person or body as they consider appropriate.

(2) In consulting under subsection (1), the Scottish Ministers—
(a) must send a copy of the application to the consultees,
(b) may send a copy of any revised application to any (or all) of them.

(3) The Scottish Ministers must, with reasons, notify the applicant if they intend to—
(a) refuse to approve it as an approved regulator, or
(b) impose conditions under section 6(2).

(4) If notification is given to the applicant under subsection (3), 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.

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).

Section 7

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)

After section 7

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.

Section 8

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

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,>

Robert Brown

248 In section 8, page 6, line 10, at end insert—
   
   <(d) further the regulatory objectives and ensure that licensed legal services providers adhere to the professional principles,>

Robert Brown

249 In section 8, page 6, line 14, at end insert—
   
   <( ) include any provision authorised by regulations under subsection (5),>
In section 8, page 6, line 19, leave out from <they> to <such> in line 20 and insert—
  \(<( ) \) the Lord President has consented, and
  \(( ) \) they have consulted such>

Section 9

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>

In section 9, page 7, line 1, after <may> insert <, with the consent of the Lord President,>

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

Section 10

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

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

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).>
In section 11, page 7, line 34, at end insert—<, or

( ) reducing standards of competent service within the legal services market,>

Section 12

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

Section 14

In section 14, page 8, line 33, at end insert—

<( ) avoidance of conflict of interest,>

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

In section 14, page 8, line 36, at end insert—

<( ) compensation (see section (compensation)),>

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.>

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).>
Section 15

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).>

Section 16

Fergus Ewing

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

Section 17

Fergus Ewing

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

After section 19

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.>
<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.>
(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.>

Section 22

Robert Brown

Supported by: Bill Aitken

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

Section 23

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

Section 24

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>

Section 26

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

Section 27

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

Before section 28

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.>
**Section 28**

_Fergus Ewing_

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

**Section 29**

_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.>

**Schedule 2**

_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>

**Schedule 3**

_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>
Schedule 4

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>.

Fergus Ewing

36 In schedule 4, page 69, line 18, at end insert—

<( ) 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.>

Fergus Ewing

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

Schedule 5

Bill Aitken

296 In schedule 5, page 71, leave out line 22.

Schedule 6

Bill Aitken

298 In schedule 6, page 73, leave out line 17.

Bill Aitken

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

After section 29

Robert Brown

286 After section 29, insert—

<Annual report to the Parliament

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.

Section 35

Fergus Ewing

38 In section 35, page 17, line 33, leave out from beginning to <expedient> in line 34 and insert <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>

Section 36

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)>

Section 37

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),>
Fergus Ewing
41  In section 37, page 19, leave out lines 13 and 14 and insert—
    <(  ) a litigation practitioner,>

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

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

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>

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

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.>

After section 37

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.

Section 39

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.>

Section 40

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.>
Section 41

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.>

Section 43

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.>

Section 45

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.>

Section 47

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)
After section 47

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.

</Working context>

Section 49

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

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

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

After section 49

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.

Section 50

Fergus Ewing

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

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

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

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>

After section 50

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.>

Section 51

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>
Fergus Ewing

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

Section 52

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

176 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.>

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.>

Schedule 8

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

178 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.>

In schedule 8, page 77, line 18, leave out <or (3)> and insert <, (3) or (3A)>

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.

Section 53

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

Section 54

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

Fergus Ewing

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

<(  ) acting as a litigation practitioner,>

Fergus Ewing

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

Fergus Ewing

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

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

Section 58

Fergus Ewing

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

<(  ) acting as a litigation practitioner,>

Fergus Ewing

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

Section 59

Fergus Ewing

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

Section 60

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>

Section 64

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))>

After section 64

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.

Section 65

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>
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).>

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

"professional principles",

“regulatory objectives”,>

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

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>

Section 68

Fergus Ewing

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

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.>

After section 70

Fergus Ewing

66 After section 70, insert—

<APEAL 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.>
Section 73

Fergus Ewing

181 In section 73, page 42, line 37, leave out <Part> and insert <Chapter>

Section 74

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.>

Section 75

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

Section 76

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).>

After section 76

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.>

Section 77

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

Section 81

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>

After section 81

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—
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.>
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).>

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).

(2) 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.

(3) 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.

(4) 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).

(5) 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).>
Fergus Ewing

193 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.>

Fergus Ewing

194 After section 81, insert—

<Ministerial functions

Ministerial intervention

(1) 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).

(2) 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.

(3) 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).

(4) 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.

(5) 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

195 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.

Section 82

Fergus Ewing

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

Section 83

Fergus Ewing

197 In section 83, page 48, line 33, after <agents> insert <and will writers>
In section 83, page 49, line 1, after <agent> insert <or will writer>

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.

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.

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

57I 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).

57J Interpretation of Part 2B

Fergus Ewing

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”,>

After section 84

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.>

Section 85

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>

Section 86

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

69 In section 86, page 50, line 32, leave out <practices> and insert <practitioners>
Fergus Ewing
70 In section 86, page 50, line 33, leave out <practices> and insert <practitioners>

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

  <( ) litigation practitioners.>

Section 90

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

  <(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.

  (2C) For the purpose of subsection (2B), the Council are to make rules which—

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

  (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)>

Fergus Ewing
73 In section 90, page 53, line 6, leave out from second <in> to end of line 8 and insert—

  <(a) after the entry for “the 2007 Act” insert—

  ““the 2010 Act” means the Legal Services (Scotland) Act 2010;”,

  (b) at the appropriate alphabetical place insert—

  ““licensed legal services provider” (or “licensed provider”) is to be
  construed in accordance with Part 2 of the 2010 Act;”.

Section 91

Bill Aitken
359 In section 91, page 53, line 14, at end insert—

  <( ) In section 18(1) (suspension of practising certificate) of the 1980 Act, after paragraph
  (e) insert—

  “(f) a solicitor has been convicted by any court of an act involving dishonesty
  or has been sentenced to a term of imprisonment;”>

Bill Aitken
360 In section 91, page 53, line 14, at end insert—
<(  ) In section 18(1) (suspension of practising certificate) of the 1980 Act, after paragraph (f) insert—

“(g) a disqualification order under the Company Directors Disqualification Act 1986 (c.46) is made against a solicitor;”>

Bill Aitken

361 In section 91, page 53, line 14, at end insert—

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

“(  ) A practising certificate which has ceased to have effect by virtue of section 18(1)(g) shall again have effect when the disqualification ceases to have effect.”>

Fergus Ewing

74 In section 91, page 53, leave out lines 29 to 31

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.”>
After section 91

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.>

Fergus Ewing

208 After section 91, insert—

<Lay representation

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 Sheriff's 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.”.>

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)(c) 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.”,
(e) 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”.

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.”.>
Robert Brown

365 After section 91, insert—

<Protection of branding of firm description

(1) The Scottish Ministers may, after consulting—

(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).>

Before section 92

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

5 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,>

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” insert “(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”,

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

Section 92

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
After section 92

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—”,

(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.”>
“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.”>

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.”

Section 93

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),>

James Kelly

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

<( ) two members of the committee shall be licensed employment law services providers,>

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.>

Fergus Ewing

85  In section 93, page 56, line 17, at end insert <(and take account of sections 4 and (Consultation by Ministers) of the 2010 Act)>

Fergus Ewing

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

Fergus Ewing

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

James Kelly

372 In section 93, page 56, line 30, at end insert—

<\( \) licensed legal services providers, or

(g) licensed employment law services providers.>

Fergus Ewing

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

\(<\) setting standards of qualification, education and training,

( ) keeping the roll,

( ) administering the Guarantee Fund,

( )>

After section 93

Fergus Ewing

88  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)).”.

54
After section 93, insert—

<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.”.>

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”.

After section 94

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).”

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”.

Bill Aitken

375 After section 94, insert—
<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.”>

Section 96

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)>

Section 97

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.”.

Section 98

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),>

After section 98

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)”.

Section 99

Fergus Ewing

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

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

Fergus Ewing

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

< ( ) section 52(2A).>

Fergus Ewing

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

After section 99

Fergus Ewing

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.>

Section 101

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.>

Schedule 9

Fergus Ewing

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

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

Fergus Ewing

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

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

Fergus Ewing

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

Fergus Ewing

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

Fergus Ewing

218 In schedule 9, page 80, line 18, at end insert—

<will writer and will writing services section (Will writers and services)>