Legal Services (Scotland) Bill

4th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 29 Schedule 1 to 6
Section 30 Schedule 7
Sections 31 to 52 Schedule 8
Sections 53 to 101 Schedule 9
Section 102 Long Title

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

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

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

(d) in sub-paragraph (4), after “practice” insert “and no annual practice contribution by a registered firm of solicitors”,

(e) 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”,

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

Section 92

Bill Aitken

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

Bill Aitken

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

Bill Aitken

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

Bill Aitken

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

Fergus Ewing

77 In section 92, page 55, line 3, leave out <objectives> and insert <functions>
Fergus Ewing
78 In section 92, page 55, leave out lines 4 to 27

After section 92

Bill Aitken
366 After section 92, insert—

<Guarantee Fund

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

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

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

(b) in subsections (3), (4) and (5), after “grant” wherever appearing, insert “or loan”,

(c) after subsection (3) insert—

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

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

Bill Aitken
367 After section 92, insert—

<Safeguarding interests of clients in certain other cases

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

(a) for “apply to the court” substitute “make”,

(b) from “leave” to the end substitute “the approval of the Council”>
After section 92, insert—

**Subscription to the Law Society**

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

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

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

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

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

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

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

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

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

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

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),>

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>

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)).”.

>
<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.”.

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.
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.

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

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).

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.

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

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.

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

In Schedule 1 (the Law Society of Scotland)—

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

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

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

Fergus Ewing

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

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

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

<(  ) a reference to a litigation practitioner is to a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act.>
Fergus Ewing
96 In schedule 9, page 79, line 17, at end insert—
<litigation practitioner>

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)>