

Regulation of Legal Services (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

PART 1

REGULATORY FRAMEWORK

CHAPTER 1

OBJECTIVES, PRINCIPLES AND KEY DEFINITIONS

Overview of Part

1 Overview of the regulatory framework

Regulatory objectives

2 Regulatory objectives

3 Application of the regulatory objectives

Professional principles

4 Professional principles

Power to amend regulatory objectives and professional principles

5 Power to amend the regulatory objectives and professional principles

Meaning of key expressions

6 Meaning of “legal services” and “legal services provider”

7 Meaning of regulatory functions

CHAPTER 2

REGULATORS

Regulatory categories

8 Regulatory categories

Requirements of category 1 regulators

9 Exercise of regulatory functions

10 Regulatory committee: composition and membership

11 Regulatory committee: lay and legal members

12 Regulatory committee: convener, sub-committees and minutes

13 Annual reports of category 1 regulator

14 Compensation funds

Requirements of category 2 regulators

15 Exercise of regulatory functions

16 Annual reports of category 2 regulator

Requirements of both category 1 and category 2 regulators

17 Register of regulated legal services providers

18 Professional indemnity insurance

Powers of the Scottish Ministers in relation to regulators

19 Review of regulatory performance by the Scottish Ministers

20 Measures open to the Scottish Ministers

Special rule changes

21 Power to direct special rule changes

22 Powers to amend or revoke directions

23 Reports on directions

24 Register of directions

CHAPTER 3

NEW REGULATORS OF LEGAL SERVICES

Applications

25 Right to provide legal services

26 Regulatory scheme

27 Publication of draft regulatory scheme and representations

Consideration and grant

28 Consideration of applications

29 Approval of application and giving effect to the regulatory scheme

Exercise of the acquired rights

30 Exercise of rights to provide legal services

31 Surrender of rights

32 Offence of pretending to have acquired rights

Review of regulatory scheme

33 Review of regulatory schemes

34 Revocation of acquired rights

Miscellaneous

35 Replacement regulatory arrangements for authorised providers

36 Consequential amendments and repeals

37 Transitional and saving provision for regulators approved under the 1990 Act

PART 2

REGULATION OF LEGAL BUSINESSES

Introductory

38 Overview of Part

Requirement to be authorised to provide legal services

39 Requirement for legal businesses to be authorised to provide legal services

40 Offence of pretending to be an authorised legal business

Regulation of authorised legal businesses

41 Rules for authorised legal businesses

42 Authorisation rules

43 Appeals in relation to authorisation decisions

44 Practice rules

45 Financial sanctions

46 Reconciling different rules

47 Monitoring of performance of authorised legal businesses

Miscellaneous

48 Law Society of Scotland

49 Powers of the Scottish Ministers to intervene

50 Entities changing regulatory regime

PART 3

COMPLAINTS

51 Change of name to the Scottish Legal Services Commission

52 Receipt of complaints: preliminary steps

53 Ineligible or premature complaints

54 Commission process relating to complaints

55 Regulatory complaints against authorised legal businesses

56 Services complaint: sanctions

57 Commission decision making and delegation

58 Commission review committee

59 Services complaints: reports

60 Disclosure of information by practitioners etc. to the Commission and relevant professional organisations

61 Power of Commission to request practitioner's details in connection with complaints

62 Services complaints: special provision for complaints against unregulated persons

63 Handling complaints

64 Annual general levy and complaints levy

65 Unregulated providers of legal services: voluntary register, annual contributions and complaints contributions

66 Commission rules as to practice and procedure

67 Conduct or regulatory complaint raised by relevant professional organisation

68 Conduct complaints: consideration by relevant professional organisations

69 Complaints: monitoring and setting of minimum standards by the Commission

70 Compensation funds: setting of minimum standards by the Commission

71 Enforcement of minimum standards

- 72 Conduct complaints: power to impose unlimited fine and removal of power to award compensation
- 73 Faculty of Advocates: complaint of professional misconduct and publication of decision
- 74 Commission membership
- 75 Role of the independent advisory panel
- 76 Commission reports
- 77 Minor and consequential amendments

PART 4

MISCELLANEOUS

Licensed legal services providers

- 78 Removal of requirement to act for fee, gain or reward
- 79 Eligibility criteria: law centres
- 80 Majority ownership

Removal of certain practising restrictions

- 81 Removal of practising restrictions: law centres, citizens advice bodies and charities

Offences relating to pretending to be a regulated provider of legal services

- 82 Offence of taking or using the title of lawyer
- 83 Offence of pretending to be a regulated legal services provider
- 84 Offence of pretending to be a member of Faculty of Advocates
- 85 Time limit for prosecution of offences

Power of the Scottish Ministers to adjust restricted legal services

- 86 Power of the Scottish Ministers to adjust restricted legal services

Minor and consequential modifications

- 87 Modification of other enactments

PART 5

GENERAL

- 88 Individual culpability for offending by an organisation
- 89 Regulations
- 90 Ancillary provision
- 91 Interpretation
- 92 Commencement
- 93 Short title

Schedule 1—Law Society of Scotland

Part 1—Category 1 regulator

Part 2—Regulation of legal businesses

Schedule 2—Further provision about measures open to the Scottish Ministers

Part 1—Performance targets

Part 2—Directions

Part 3—Censure

Part 4—Financial penalties

Part 5—Making changes to regulatory functions

Part 6—Procedure for imposing a measure

Schedule 3—Minor and consequential modifications of enactments

Part 1—Regulatory framework

Part 2—Renaming Scottish Legal Services Commission

Part 3—Other amendments relating to the Scottish Legal Services Commission

Part 4—General

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 25-EN), a Financial Memorandum (SP Bill 25-FM), a Policy
Memorandum (SP Bill 25-PM), a Delegated Powers Memorandum (SP Bill 25-DPM) and
statements on legislative competence (SP Bill 25-LC).**

Regulation of Legal Services (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to the regulation of legal services.

PART 1

REGULATORY FRAMEWORK

CHAPTER 1

OBJECTIVES, PRINCIPLES AND KEY DEFINITIONS

Overview of Part

1 Overview of the regulatory framework

(1) Chapter 1 makes provision in respect of—

- (a) the objectives of legal regulation and how they are to be applied (see sections 2 and 3),
- (b) the professional principles (see section 4),
- (c) conferring power on the Scottish Ministers to update the objectives and principles (see section 5),
- (d) defining key expressions for the purposes of this Act (see sections 6 and 7).

(2) Chapter 2 makes provision in respect of regulators of legal services, which includes—

- (a) establishing two categories of regulator and assigning the existing regulators to one of those categories (see section 8),
- (b) setting the requirements for a category 1 regulator, which include—
 - (i) having an independent regulatory committee (where necessary) which is responsible for exercising its regulatory functions (see sections 9 to 12),
 - (ii) preparing an annual report (see section 13),
 - (iii) having a compensation fund (see section 14),
- (c) setting the requirements for a category 2 regulator, which include—
 - (i) exercising its regulatory functions independently of any other functions it has and properly in all respects (see section 15),

- (ii) preparing an annual report (see section 16),
- (d) requiring both category 1 and category 2 regulators to—
 - (i) maintain a publicly available register of the legal services providers that it regulates (see section 17), and
 - (ii) have rules in respect of professional indemnity insurance (see section 18),
- (e) setting out the role and powers of the Scottish Ministers in respect of regulators and the regulatory framework (see sections 19 and 20 and schedule 2),
- (f) conferring power on regulators to make special rule changes in relation to a particular legal services provider where it is appropriate to do so (see sections 21 to 24).
- (3) Paragraph 28 of schedule 3 provides for category 1 regulators to be subject to the Freedom of Information (Scotland) Act 2002 in respect of the exercise of their regulatory functions.
- (4) Chapter 3 makes provision about the process for a body to become accredited to authorise persons and acquire and exercise rights to provide legal services, which includes—
 - (a) applications and the application process (see sections 25 and 27),
 - (b) requiring the applicant to produce a draft regulatory scheme, which must meet certain requirements (see section 26),
 - (c) the manner in which applications are to be considered and approved (see sections 28 and 29),
 - (d) how any rights acquired by persons authorised by the accredited regulator are to be exercised (see section 30),
 - (e) how the rights may be surrendered or revoked (and what happens to the providers affected) (see sections 31, 34 and 35),
 - (f) the review of regulatory schemes (see section 33).
- (5) Part 1 of schedule 1 makes amendments to enactments relating to the Law Society in consequence of the Society being a category 1 regulator and Part 1 of schedule 3 makes other consequential amendments relating to the Society.

Regulatory objectives

2 Regulatory objectives

- (1) The objectives of regulating legal services are—
 - (a) to support the constitutional principles of the rule of law and the interests of justice,
 - (b) to protect and promote the interests of consumers and the wider public interest,
 - (c) to promote—
 - (i) access to justice,
 - (ii) an independent, strong and diverse legal profession,
 - (iii) quality, innovation and competition in the provision of legal services, and

(iv) effective communication between regulators, legal services providers and bodies that represent the interests of consumers, and

(d) for those regulating legal services to—

- 5
- (i) use and promote best practice in relation to assessing and improving the quality of regulation and compliance with applicable legislation and rules,
 - (ii) adhere to the regulatory principles described in section 3(4), and
 - (iii) promote and maintain adherence to the professional principles.

(2) In this Act, the “regulatory objectives” are the objectives described in subsection (1).

3 Application of the regulatory objectives

10 (1) A regulatory authority must exercise its regulatory functions (see section 7) in a manner which—

- (a) is compatible with the regulatory objectives, and
- (b) it considers most appropriate to meet those objectives.

15 (2) For the purpose of section 2(1)(b) and (c), a regulatory authority must take into account the principles that—

- 20
- (a) a consumer should have access to a range of legal services that are affordable and suited to the consumer’s needs,
 - (b) a consumer should receive sufficient information about the consumer’s rights and the services that are available,
 - (c) a consumer should be treated fairly at all times,
 - (d) a consumer should be able to access a means of redress when services are not of a suitable standard, and
 - (e) the views of consumers should be understood and taken into account.

25 (3) Without limit to the generality of section 2(1)(c)(ii), a regulatory authority must encourage equal opportunities (as defined in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).

(4) For the purpose of section 2(1)(d)(ii), the regulatory principles are—

- 30
- (a) that regulatory functions should be—
 - (i) exercised in a way that is transparent, accountable, proportionate and consistent, and
 - (ii) targeted only at cases in which action is needed, and
 - (b) that regulatory functions should be exercised in a way that contributes to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of such functions to do so.

35 (5) For the purpose of this section, the regulatory authorities are—

- (a) the Court of Session,
- (b) the Lord President,
- (c) the Commission,

- (d) each category 1 and category 2 regulator, and
- (e) each approved regulator of licensed providers.

Professional principles

4 Professional principles

- 5 (1) A person providing legal services should—
- (a) support the proper administration of justice,
 - (b) act with independence (in the interests of justice),
 - (c) act with integrity,
 - 10 (d) act in the best interests of the person’s clients (and keep clients’ affairs confidential),
 - (e) maintain good standards of work,
 - (f) where—
 - (i) exercising a right of audience before any court, or
 - (ii) conducting litigation in relation to proceedings in any court,
 - 15 comply with such duties as are normally owed to the court by such persons,
 - (g) meet the person’s obligations under any relevant professional rules,
 - (h) act in conformity with professional ethics.
- (2) In this Act, the “professional principles” are the principles described in subsection (1).

Power to amend regulatory objectives and professional principles

5 Power to amend the regulatory objectives and professional principles

- 20 (1) The Scottish Ministers may by regulations modify—
- (a) sections 2 and 3 to add, amend or remove a regulatory objective or a principle described in those sections (and how it is to be applied),
 - (b) section 4 to add, amend or remove a professional principle.
- 25 (2) Before making regulations under this section, the Scottish Ministers must consult—
- (a) the Lord President,
 - (b) the Commission,
 - (c) the independent advisory panel of the Commission,
 - (d) the Competition and Markets Authority,
 - 30 (e) each category 1 and category 2 regulator,
 - (f) each approved regulator of licensed providers.
- (3) Regulations under this section are subject to the affirmative procedure.

Meaning of key expressions

6 Meaning of “legal services” and “legal services provider”

(1) For the purposes of this Act, legal services are services which consist of (at least one of)—

(a) the provision of legal advice or assistance in connection with—

- (i) any contract, deed, writ, will or other legal document,
- (ii) the application of the law, or
- (iii) any form of resolution of legal disputes,

(b) the provision of legal representation in connection with—

- (i) the application of the law, or
- (ii) any form of resolution of legal disputes.

(2) But, for those purposes, legal services do not include—

- (a) judicial activities,
- (b) any other activity of a judicial nature,
- (c) any activity of a quasi-judicial nature (for example, acting as a mediator).

(3) In subsection (1)(a)(iii) and (b)(ii), “legal disputes” includes disputes as to any matter of fact the resolution of which is relevant to determining the nature of any person’s legal rights or obligations.

(4) In this Act, “legal services provider” means a person or body that provides legal services (whether or not directly to the public and whether or not the person’s provision of such legal services is regulated).

7 Meaning of regulatory functions

For the purposes of this Act, a reference to the regulatory functions of a regulatory authority is a reference to its functions of regulating legal services providers in relation to any matter of professional practice, conduct or discipline including, in particular—

- (a) setting standards for admission or authorisation and the ongoing training of its providers,
- (b) handling complaints about its providers,
- (c) making regulatory rules under any relevant enactment, and
- (d) complying with the requirements imposed on the regulatory authority under this Act (for example, in relation to keeping a register of its providers) and, if applicable, Part 2 of the 2010 Act.

CHAPTER 2

REGULATORS

Regulatory categories

8 Regulatory categories

- 5 (1) For the purposes of this Act, a regulator of legal services providers is subject to different requirements according to whether it is—
- (a) assigned as—
 - (i) a category 1 regulator,
 - (ii) a category 2 regulator, or
 - 10 (b) in relation to licensed legal services providers, an approved regulator of such providers (for which, see Part 2 of the 2010 Act).
- (2) The Law Society of Scotland is assigned as a category 1 regulator.
- (3) The Faculty of Advocates (acting on behalf of the Court of Session) and the Association of Commercial Attorneys are assigned as category 2 regulators.
- 15 (4) A body that has been approved under section 29 as an accredited regulator is, until such time as the Scottish Ministers make regulations under subsection (4)(b) of that section, deemed to be assigned as a category 2 regulator.
- (5) The Scottish Ministers may by regulations amend this section to—
- 20 (a) reassign a body that is for the time being mentioned in this section to a different regulatory category,
 - (b) add a body which is approved under section 29 as an accredited regulator and assign its regulatory category,
 - (c) remove a body that has ceased to be a regulator,
 - (d) update the name or description of a regulator.
- 25 (6) When considering whether a regulator should be assigned (or reassigned) as a category 1 or a category 2 regulator, the Scottish Ministers must have regard to—
- (a) the type and range of legal services that are (or are to be) regulated,
 - (b) whether the legal services are (or are to be) provided directly to members of the public, and
 - 30 (c) the number of legal services providers that the regulator regulates (or is likely to regulate).
- (7) Regulations under this section are subject to the affirmative procedure.
- (8) Before making regulations under this section, the Scottish Ministers must consult—
- 35 (a) the body whose category is being assigned (or reassigned),
 - (b) the Lord President,
 - (c) the independent advisory panel of the Commission,
 - (d) the other category 1 and category 2 regulators, and
 - (e) each approved regulator of licensed providers (if not otherwise consulted).

- (9) For the purposes of subsection (1), “regulator” means—
- (a) the Law Society,
 - (b) the Faculty of Advocates,
 - (c) an approved regulator of licensed providers,
 - 5 (d) an accredited regulator, or
 - (e) a body which has had an application under section 25 of the 1990 Act granted under section 26 of that Act.

Requirements of category 1 regulators

9 Exercise of regulatory functions

- 10 (1) A category 1 regulator must exercise its regulatory functions—
- (a) independently of its other functions or activities (if any),
 - (b) properly in all respects (in particular, with a view to achieving public confidence).
- (2) Where a category 1 regulator has functions other than regulatory functions, it must—
- (a) establish and maintain a regulatory committee to discharge its regulatory functions,
 - 15 (b) ensure that the governing body of the regulator does not interfere with the committee’s discharge of those functions,
 - (c) when consulted on a matter relating to its regulatory functions, delegate responsibility for responding to the committee (in so far as the matter relates to those functions).
- 20 (3) A category 1 regulator must—
- (a) consult its regulatory committee before making decisions affecting the committee’s funding and resources, and
 - (b) ensure that the committee is adequately funded and resourced to be able to discharge its functions.
- 25 (4) A regulatory committee may—
- (a) determine its structure, governance arrangements and priorities,
 - (b) arrange for the exercise of its functions by a sub-committee or an individual (which may be a member of staff of the regulator).
- (5) An arrangement under subsection (4)(b) does not affect the regulatory committee’s—
- 30 (a) responsibility for the carrying out of delegated functions, or
 - (b) ability to carry out delegated functions.
- (6) A regulatory committee of a category 1 regulator must consult the governing body of the regulator before making changes to its structure or governance arrangements.
- 35 (7) Except where provided for in an enactment, the governing body and regulatory committee of a category 1 regulator are to agree arrangements for resolving any disputes that may arise between them.

- (8) In this Part, a reference to the governing body of a category 1 regulator is a reference to the group of persons (however described) who are responsible for the direction, management and control of the regulator and the exercise of its statutory functions.

10 Regulatory committee: composition and membership

- 5 (1) It is for the regulatory committee of a category 1 regulator to appoint its members.
- (2) But a category 1 regulator may appoint members to its regulatory committee if, at the time of appointment, the regulatory committee is unable to do so (for example, if it is appointing the members of the first regulatory committee).
- (3) A member of a regulatory committee—
- 10 (a) may be a person regulated by the regulator as a legal services provider, but
- (b) must not be, or have been for at least two years, involved in the governance of the regulator or the exercise of its non-regulatory functions.
- (4) A person may not be a member of the regulatory committee if the person—
- 15 (a) has had a right to practise (in law or otherwise) removed as a result of a finding of misconduct by a professional or disciplinary body,
- (b) is suspended from practising (in law or otherwise) by a professional or disciplinary body,
- (c) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150 (N.I. 4)), or
- 20 (d) has been convicted of an offence involving dishonesty.
- (5) At least 50% of the members of a regulatory committee (and any sub-committee of it) of a category 1 regulator are to be lay members (see section 11).
- (6) For the purpose of subsection (4), a professional or disciplinary body is a body which, in the opinion of the category 1 regulator, regulates the provision of professional services (such as law or accountancy) by means of requiring persons who wish to provide those services to meet certain standards and criteria and adhere to rules governing acceptable practice and conduct.
- 25 (7) A category 1 regulator must publish guidance in respect of how it applies subsection (4) in such a manner as to bring it to the attention of persons who are likely to be interested in the membership of its regulatory committee.
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11 Regulatory committee: lay and legal members

- (1) To be appointable as a lay member of a regulatory committee, a person must meet the criteria in subsections (2) and (3).
- 35 (2) The person must appear to the regulatory committee (or, in a case where the committee is unable to do so, the category 1 regulator) to be—
- (a) qualified to represent the interests of the public in relation to the provision of legal services in Scotland, or
- (b) having regard to the regulator's regulatory functions, suitable in other respects.

- (3) The person must not be, and must not have been for at least 10 years, eligible for appointment as a legal member.
- (4) To be appointable as a legal member of a regulatory committee, the person must be—
- 5 (a) a solicitor or a person training to become a solicitor in accordance with regulations made under section 5 of the 1980 Act,
- (b) an advocate or a person who has matriculated as an intransit with a view to becoming an advocate,
- (c) a conveyancing or executry practitioner as defined in section 23 of the 1990 Act,
- 10 (d) a person who has acquired a right to provide legal services by virtue of Chapter 3 (or under section 27 of the 1990 Act),
- (e) regulated or represented by—
- (i) a regulatory body authorised by the Legal Services Board established under section 2 of the Legal Services Act 2007 with the exception of those authorised to regulate chartered accountants,
- 15 (ii) the Law Society of Northern Ireland,
- (iii) the Bar of Northern Ireland.

12 Regulatory committee: convener, sub-committees and minutes

- (1) The regulatory committee of a category 1 regulator is to appoint one of its lay members as its convener.
- 20 (2) If the convener is not present at a meeting of the committee, another of its lay members is to chair the meeting.
- (3) A sub-committee of the regulatory committee may—
- (a) be chaired by a person other than a lay member,
- (b) co-opt persons who are not members of the regulatory committee (subject to section 10(3)(b) and (4)).
- 25 (4) On the request of any person for a copy of the minutes of a meeting of the regulatory committee of a category 1 regulator, the committee must, if the request is reasonable, give the person a copy of those minutes within the period of 28 days beginning with the day of the request.
- 30 (5) Where a request for a copy of minutes is made under subsection (4), the regulatory committee—
- (a) may withhold information contained in the minutes, and
- (b) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so.

13 Annual reports of category 1 regulators

- 35 (1) A category 1 regulator or, where section 9(2) applies, its regulatory committee, must prepare a report on the exercise of its regulatory functions as soon as practicable after the end of each reporting year.

- (2) The report must include—
- (a) information demonstrating how the category 1 regulator or, where section 9(2) applies, its regulatory committee, is complying with the regulatory objectives,
 - (b) information as to how the regulator or, where section 9(2) applies, its regulatory committee, is carrying out its regulatory functions,
 - (c) a statement on the strategic priorities of the regulator or, where section 9(2) applies, its regulatory committee, for the next reporting year in relation to its regulatory functions,
 - (d) a copy of the regulator's or, where section 9(2) applies, its regulatory committee, annual accounts (in so far as they are relevant to the carrying out of regulatory functions),
 - (e) a summary of decisions to pay out from the compensation fund and professional indemnity insurance, including details on—
 - (i) how decisions on claims are made,
 - (ii) the criteria for making decisions,
 - (iii) the average length of time it has taken to make a payment following the making of a claim,
 - (iv) the proportion of claims that have been paid out, whether in part or in full, compared to the number of claims made,
 - (f) information on any measures taken or financial penalties imposed by the regulator on legal services providers that it regulates as a result of complaints remitted (or treated as having been remitted) to it under the 2007 Act (including information as to compliance with the measures and the actions taken to enforce them),
 - (g) where the Commission has given a direction in relation to the handling of complaints, details of how the regulator or, where section 9(2) applies, its regulatory committee, has complied with it,
 - (h) where the Commission has given a direction in relation to the compensation fund, details of how the regulator or, where section 9(2) applies, its regulatory committee, has complied with it,
 - (i) details of steps taken by the regulator or, where section 9(2) applies, its regulatory committee, to ensure compliance with any measures taken under section 20 by the Scottish Ministers,
 - (j) a statement indicating whether the regulator or, where section 9(2) applies, its regulatory committee, considers the category which it has been assigned is appropriate for the purposes of section 8 (having regard to section 8(6)).
- (3) Where section 9(2) applies—
- (a) the category 1 regulator must make available to its regulatory committee such information as the committee may require to prepare an annual report under this section,
 - (b) the report must include such information as the committee considers relevant about—
 - (i) the committee's internal governance arrangements, and

- (ii) the relationship between the committee and the regulator’s governing body, and
 - (c) the regulatory committee must involve the governing body of the regulator in the preparation of the report.
- 5 (4) When preparing an annual report, a category 1 regulator, or where section 9(2) applies, its regulatory committee must consult—
 - (a) the Lord President, and
 - (b) the independent advisory panel of the Commission.
- 10 (5) A category 1 regulator, or where section 9(2) applies, its regulatory committee, must provide a copy of each annual report it prepares under this section to the Scottish Ministers.
- (6) The Scottish Ministers must—
 - (a) lay a copy of each annual report they receive before the Scottish Parliament, and
 - 15 (b) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those likely to have an interest in the report).
- (7) In this section, “reporting year” means a 12 month period ending on 31 March.

14 Compensation funds

- 20 (1) A category 1 regulator must establish and maintain a fund for the purpose of making grants to compensate persons who suffer financial loss by reason of dishonesty by a legal services provider regulated by the regulator (or a provider it regulated at the time the dishonesty occurred).
- (2) Where section 9(2) applies, the fund must be under the management and control of the regulatory committee.
- 25 (3) It is for the category 1 regulator or, where section 9(2) applies, its regulatory committee, to determine whether to make payments from the fund.
- (4) A category 1 regulator or, where section 9(2) applies, its regulatory committee must have rules in relation to the fund which—
 - (a) state the minimum monetary amount to be contained in the fund,
 - 30 (b) describe the way in which the fund is administered,
 - (c) specify the criteria for a grant being made from the fund, which may include—
 - (i) limiting the claims that may be made by a person in respect of an act of dishonesty by a legal services provider,
 - 35 (ii) making payments from the fund to other persons (such as judicial factors) in connection with mitigating risks to the clients of a provider arising through the actions of the provider,
 - (d) provide the procedures for making and determining a claim,
 - (e) require the making of contributions to that fund by the legal services providers it regulates,

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- (f) make provision for the destination or distribution of the fund in the event that the regulator ceases to operate.
- (5) The rules for the fund may also include such further provision as the category 1 regulator or, where section 9(2) applies, its regulatory committee considers necessary or expedient for the operation of the fund.
- (6) Before making or amending rules in pursuance of subsection (4), the category 1 regulator, or where section 9(2) applies, its regulatory committee must consult the independent advisory panel of the Commission.
- (7) Where section 9(2) applies, when making or amending rules in pursuance of subsection (4), the regulatory committee of a category 1 regulator must have regard to the views of the governing body of the regulator.
- (8) The Scottish Ministers may by regulations make further provision in connection with funds established under this section and the rules a category 1 regulator or, where section 9(2) applies, its regulatory committee, must have for such funds.
- (9) Before making regulations under subsection (8), the Scottish Ministers must consult—
- (a) the Lord President,
 - (b) each category 1 regulator or, where section 9(2) applies, its regulatory committee,
 - (c) the independent advisory panel of the Commission.
- (10) Regulations under subsection (8) are subject to the negative procedure.

Requirements of category 2 regulators

15 Exercise of regulatory functions

- (1) A category 2 regulator must exercise its regulatory functions—
- (a) independently of its other functions or activities (if any),
 - (b) properly in all respects (in particular, with a view to achieving public confidence).
- (2) The internal governance arrangements of a category 2 regulator must incorporate such provision as is necessary with a view to ensuring that the regulator—
- (a) always exercises its regulatory functions in accordance with subsection (1),
 - (b) allocates sufficient resources (financial and otherwise) to the exercise of its regulatory functions,
 - (c) regularly reviews how effectively it is exercising its regulatory functions (in particular, by reviewing the effectiveness of its regulatory scheme).

16 Annual reports of category 2 regulators

- (1) A category 2 regulator must prepare a report on the exercise of its regulatory functions as soon as practicable after the end of each reporting year.
- (2) The report must include—
- (a) information demonstrating how the regulator is complying with the regulatory objectives,
 - (b) information as to how the regulator is carrying out its regulatory functions,

- (c) a statement on the regulator’s strategic priorities for the next reporting year in relation to its regulatory functions,
- (d) a summary of the costs incurred by the regulator in carrying out its regulatory functions,
- 5 (e) information on any measures taken or financial penalties imposed by the regulator on the legal services providers that it regulates as a result of complaints remitted (or treated as having been remitted) to it under the 2007 Act (including information as to compliance with the measures and the actions taken to enforce them),
- 10 (f) where the Commission has given a direction in relation to the handling of complaints, details of how the regulator has complied with it,
- (g) details of steps taken by the regulator to ensure compliance with any measures taken under section 20 by the Scottish Ministers,
- 15 (h) a statement indicating whether the regulator considers the category to which it has been assigned is appropriate for the purposes of section 8 (having regard to section 8(6)).

(3) A category 2 regulator must publish its annual report by such electronic means as the regulator considers appropriate as soon as practicable after the end of the reporting year to which it relates.

(4) In this section, “reporting year” means a yearly period ending on 31 March.

20 *Requirements of both category 1 and category 2 regulators*

17 Register of regulated legal services providers

(1) Each category 1 and category 2 regulator must establish and maintain a register of the legal services providers that it regulates which are authorised to provide legal services.

(2) The register must contain—

25 (a) in relation to each legal services provider that is an individual—

- (i) the name of the individual,
- (ii) the current address of the place of business (or primary place of business) of the individual,
- 30 (iii) the length of time that the individual has been regulated by the regulator in connection with providing legal services,

(b) in relation to each legal services provider that is not an individual—

- (i) the name of the body and what type of body it is (for example, a partnership),
- (ii) the address of its principal place of business,
- 35 (iii) the length of time that the body has been regulated by the regulator in connection with providing legal services.

(3) The register must also contain the details of any person or body that it regulates who or which—

- (a) is not authorised to provide legal services but is entitled to be so authorised, and
- 40 (b) wishes to continue to appear in the register.

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- (4) An entry for a legal services provider that appears in the register by virtue of subsection (3) must state that the provider is not providing legal services at that time.
- (5) The register must be accessible to, and searchable by, the public, free of charge, by such electronic means as the regulator considers appropriate.
- 5 (6) In this section, a reference to a legal services provider being authorised includes a reference to—
- (a) a solicitor who has in force a practising certificate (within the meaning of section 4 of the 1980 Act),
- (b) a practising advocate (who is not suspended),
- 10 (c) a legal business that is authorised to provide legal services by a category 1 regulator.

18 Professional indemnity insurance

- (1) Each category 1 and category 2 regulator must have rules concerning indemnity for the legal services providers it regulates against any kind of professional liability.
- 15 (2) In particular, the rules may—
- (a) require the regulator to establish and maintain a fund or funds for the purpose of such indemnity,
- (b) require the regulator to take out and maintain insurance with an authorised insurer,
- 20 (c) require legal services providers or any specified type or description of such providers to take out and maintain insurance with an authorised insurer.
- (3) Failure to comply with rules made under this section may be treated as professional misconduct or unsatisfactory professional conduct.
- (4) Before making or amending rules in pursuance of subsection (1), the regulator (or, where section 9(2) applies, its regulatory committee) must—
- 25 (a) consult—
- (i) in the case where the rules are being made or amended by a regulatory committee, the governing body of the regulator, and
- (ii) the independent advisory panel of the Commission, and
- 30 (b) obtain the agreement of the Lord President to the making of the rules or, as the case may be, the amendments.
- (5) In this section, an “authorised insurer” is—
- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to effect or carry out contracts of general liability insurance,
- 35 (b) a person who has permission under Part 4A of that Act to effect or carry out contracts of insurance relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses.
- (6) The definition of “authorised insurer” must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and

(c) schedule 2 of that Act.

- (7) In this section “professional liability” means any civil liability incurred by a legal services provider in connection with the provision of legal services.

Powers of the Scottish Ministers in relation to regulators

5 **19 Review of regulatory performance by the Scottish Ministers**

- (1) The Scottish Ministers may review the performance of a category 1 or category 2 regulator’s exercise of its regulatory functions if they are requested to do so by—

(a) the Scottish Parliament (whether or not following consideration of the regulator’s annual report),

10 (b) the Competition and Markets Authority, or

(c) Consumer Scotland.

- (2) A request for a review may be made under subsection (1) only where the requesting body is concerned that the regulator is failing to exercise its regulatory functions—

(a) in a manner that is compatible with the regulatory objectives, or

15 (b) in the public interest.

- (3) Reviewing the performance of a category 1 or category 2 regulator includes (in particular) doing so by reference to—

(a) its compliance with the regulatory objectives and professional principles,

(b) the exercise of its regulatory functions,

20 (c) the operation of its regulatory committee (if any) or other internal governance arrangements,

(d) its compliance with—

(i) any direction to it by the Commission under the 2007 Act, or

(ii) any measures applying to it by virtue of section 20(4).

- 25 (4) A category 1 or 2 regulator must—

(a) provide such information about its performance of its regulatory functions as the Scottish Ministers may reasonably request, and

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

- 30 (5) Following a review under subsection (1), the Scottish Ministers must—

(a) prepare a report detailing their findings and any measures they intend to take under section 20, and

(b) publish the report in such manner as they consider appropriate.

- 35 (6) The Scottish Ministers may delegate their functions under subsection (1) to such a person or body (“the delegate”) as they consider appropriate.

- (7) The delegate must, as soon as practicable after conducting a review, send the Scottish Ministers a report detailing its findings and recommendations (if any).

- (8) Following receipt of a report under subsection (7), the Scottish Ministers must—
- (a) publish the report in such manner as they consider appropriate, and
 - (b) indicate whether they intend to take any measures under section 20.

20 Measures open to the Scottish Ministers

- 5 (1) The Scottish Ministers may, in relation to a category 1 or category 2 regulator, take one or more of the measures mentioned in subsection (4) if they consider that to be appropriate.
- 10 (2) When considering the appropriateness of taking any of those measures, or a combination of them, the Scottish Ministers must have particular regard to the effect that it may have on the regulator's observance of the regulatory objectives.
- (3) Schedule 2 (to which subsection (1) is subject) makes provision concerning the measures mentioned in subsection (4) and the procedure to be followed in taking them.
- (4) The measures are—
- 15 (a) setting performance targets,
 - (b) directing that action be taken,
 - (c) publishing a statement of censure,
 - (d) imposing a financial penalty,
 - (e) making changes to, or removing some or all of, the regulatory functions exercised by the regulator.
- 20 (5) The Lord President's agreement is required for the taking of the measures mentioned in subsection (4)(a), (b), (c) or (e).
- (6) The Scottish Ministers may by regulations—
- 25 (a) specify other measures that may be taken by them in relation to category 1 and category 2 regulators,
 - (b) make further provision about the measures that they may take (including for the procedures to be followed).
- (7) Before making regulations under subsection (6), the Scottish Ministers must—
- (a) have the Lord President's agreement, and
 - (b) consult each category 1 and category 2 regulator.
- 30 (8) Regulations under this section are subject to the affirmative procedure.

Special rule changes

21 Power to direct special rule changes

- (1) A regulator may, on the application of a legal services provider that it regulates, direct that any rule of the regulator—
- 35 (a) does not apply to the provider, or
 - (b) applies to the provider with such modifications as may be specified in the direction.

- (2) A direction may be given only if the regulator considers it—
- (a) desirable for the purpose of enabling a new or alternative way of providing or regulating legal services to be piloted, or
 - (b) reasonable and proportionate for the purpose of—
 - (i) avoiding a regulatory conflict,
 - (ii) removing an unnecessary rule, or
 - (iii) making a rule less onerous.
- (3) A direction may not disapply or modify a rule that regulates (in respect of a legal services provider)—
- (a) conduct or discipline, or
 - (b) the handling of complaints.
- (4) Where a regulator considers that giving a direction could have the effect of restricting, distorting or preventing competition to any significant extent, it must, before giving the direction, consult the Competition and Markets Authority on the effect of the direction.
- (5) A copy of each direction must be given to—
- (a) the legal services provider to whom it relates,
 - (b) the Lord President, and
 - (c) the Scottish Ministers.
- (6) A direction—
- (a) must specify the day on which it comes into force,
 - (b) may be subject to conditions, and
 - (c) may make different provision for different purposes.
- (7) A direction ceases to have effect on whichever day is the earlier of—
- (a) if the direction specifies that it ceases to have effect on a particular day, that day,
 - (b) if the direction is revoked under section 22, the day on which the revocation comes into force, or
 - (c) the day which is five years after the day on which the direction comes into force.
- (8) An application under this section must be made in such manner as the regulator may direct.
- (9) In this section—
- “direction” means, in relation to a regulator, a direction given (or to be given) by the regulator under subsection (1) (including as it may be amended under section 22),
- “regulator” means a category 1 or category 2 regulator or an approved regulator of licensed providers,
- “rule” means, in relation to a regulator, a rule (including a rule in a scheme) made in the exercise of the regulator’s regulatory functions.

- (10) A function conferred on a regulator by this section or section 22 is a regulatory function of the regulator (see also sections 3 and 7).

22 Powers to amend or revoke directions

- (1) A regulator may—
- 5 (a) amend a direction on the application of the legal services provider to whom it relates, or
- (b) revoke a direction.
- (2) The Lord President may revoke a direction at any time by giving notice to—
- 10 (a) the regulator that gave the direction,
- (b) the legal services provider to whom the direction relates, and
- (c) the Scottish Ministers.
- (3) Section 21(2) to (8) applies to an amendment under subsection (1) as it applies to a direction.
- 15 (4) Section 21(5) and (6)(a) applies to a revocation under subsection (1) as it applies to a direction.
- (5) Section 21(6)(a) applies to a revocation under subsection (2) as it applies to a direction.
- (6) In this section, “direction” and “regulator” have the meanings given in section 21(9).

23 Reports on directions

- (1) For each reporting period, a regulator must prepare a report on each relevant direction.
- 20 (2) The report must state and explain the regulator’s opinion on whether the direction is still—
- (a) in accordance with section 21(2)(a) or (b),
- (b) compatible with the regulatory objectives, and
- (c) most appropriate to meet those objectives.
- 25 (3) The reporting periods are—
- (a) an initial period of two years beginning with the day on which the direction comes into force, and
- (b) a further period of two years beginning with the day immediately after the initial period.
- 30 (4) The regulator must provide a copy of each report to the Lord President as soon as reasonably practicable after the end of the period to which to report relates.
- (5) In this section—
- “regulator” has the meaning given by section 21(9),
- “relevant direction” means, in relation to a regulator, a direction given by the
- 35 regulator under section 21(1) (including as it may be amended) that is still in force.

24 Register of directions

- (1) A regulator must establish and maintain a register of relevant directions.
- (2) The register must for each direction—
- (a) contain a copy of—
 - (i) the application for the direction,
 - (ii) the direction,
 - (iii) any application to amend the direction,
 - (iv) any amendments to the direction, and
 - (v) any report under section 23(4) on the direction, and
 - (b) specify the day on which the direction will cease to have effect (if not revoked earlier).
- (3) A regulator—
- (a) must redact information in a document mentioned in subsection (2) if satisfied that its disclosure would or would be likely to breach the data protection legislation,
 - (b) may redact information in such a document if satisfied that its disclosure would or would be likely to—
 - (i) prejudice substantially the commercial interests of any person, or
 - (ii) breach an obligation of confidence owed by any person.
- (4) The register must be accessible to, and searchable by, the public, free of charge, by such electronic means as the regulator considers appropriate.
- (5) In this section—
- “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018,
 - “regulator” has the meaning given by section 21(9),
 - “relevant direction” means, in relation to a regulator, a direction given by the regulator under section 21(1) that is still in force.

CHAPTER 3

NEW REGULATORS OF LEGAL SERVICES

Applications

25 Right to provide legal services

- (1) A body may apply to the Lord President and the Scottish Ministers for the purpose of the body being accredited to—
- (a) authorise persons to exercise (any or all of) the rights listed in subsection (2), and
 - (b) regulate those persons’ exercise of the acquired rights.
- (2) The rights are—
- (a) the right to conduct litigation on behalf of members of the public,

- (b) rights of audience,
- (c) the right to provide other types of legal services.
- (3) Only natural persons may be authorised to exercise the rights listed in paragraphs (a) and (b) of subsection (2).
- 5 (4) An application for accreditation under this section must include—
 - (a) a draft regulatory scheme, and
 - (b) a statement that the body will comply with the requirements of section 27.

26 Regulatory scheme

- 10 (1) The draft regulatory scheme to accompany an application for accreditation under section 25(4) must—
 - (a) specify the rights that it is proposed persons authorised by the body may acquire,
 - (b) contain the body's proposed—
 - 15 (i) authorisation rules,
 - (ii) practice rules, and
 - (iii) if applicable, its ALB rules for the purposes of Part 2,
 - (c) set out—
 - (i) how the body will exercise its regulatory functions compatibly with the regulatory objectives,
 - (ii) the regulatory category to which the body thinks it should be assigned,
 - 20 (d) deal with such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as the regulations may specify).
- (2) For the purpose of subsection (1)(a), an application to acquire (either or both of) the rights listed in paragraph (a) or (b) of section 25(2) must specify—
 - (a) the courts in which authorised providers are to be able to practise, and
 - 25 (b) the categories of proceedings authorised providers are to be able to undertake.
- (3) The authorisation rules are rules about—
 - (a) the procedure for a person to become an authorised provider of the body, including—
 - 30 (i) the making of applications for authorisation,
 - (ii) the criteria to be met by applicants,
 - (iii) the determination of applications,
 - (iv) the grant of authorisation to exercise acquired rights,
 - (b) the terms of the authorisation including, in particular, the attaching of conditions or restrictions,
 - 35 (c) the renewal of the authorisation to exercise the acquired rights,
 - (d) circumstances in which the authorisation may be suspended or withdrawn,

- (e) fees that the body intends to charge in connection with the authorisation,
- (f) how the body will review any decision—
 - (i) refusing an application for authorisation or renewal,
 - (ii) granting an application subject to conditions or restrictions,
 - (iii) suspending or withdrawing the authorisation.

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(4) The authorisation rules must provide—

- (a) that only persons that the body considers to be fit and proper may be authorised,
- (b) for the non-renewal, suspension or withdrawal of authorisation where an authorised provider is breaching (or has breached) the regulatory scheme or other rules of professional practice that apply to it.

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(5) The practice rules are rules about—

- (a) the standards to be met by authorised providers in the exercise of acquired rights,
- (b) accounting and auditing,
- (c) professional indemnity (in respect of which, see section 18),
- (d) the making and handling of complaints and, in particular, how the body will deal with complaints remitted (or treated as having been remitted) to it under the 2007 Act in relation to its authorised providers,

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- (e) the measures the body may take, in relation to its authorised providers, if—
 - (i) there is a breach of the regulatory scheme, or
 - (ii) a complaint referred to in paragraph (d) is upheld.

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(6) The practice rules must include provision enabling the body to comply with the provisions of section 30(4).

(7) For the purpose of subsection (5)(d), the practice rules must—

- (a) require publication of a decision relating to a conduct complaint suggesting professional misconduct of an authorised provider of the body that is remitted to the body by the Commission (or is treated as having been so remitted by virtue of section 33A(2) of the 2007 Act),
- (b) require such a decision to include—
 - (i) detail of the facts established,
 - (ii) a statement of reasons for the making of the decision, and
 - (iii) where the complaint is upheld, information about any penalty imposed,
- (c) where such a complaint is upheld, allow the body to omit any information from the published decision which it considers would be likely to damage the interests of persons other than—

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- (i) the authorised provider against whom the complaint is made, and
- (ii) where the authorised provider is a natural person, the partner or family of that person,

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(but subject to the body publishing its reasons for any such omission),

(d) where such a complaint is not upheld, allow the body to omit the name of the authorised provider against whom the complaint is made from the published decision where it considers that to be appropriate.

(8) In relation to draft regulatory schemes which seek a right of audience, the practice rules must also include provision—

(a) stating general criteria to which authorised providers should have regard in determining whether to accept instructions to represent a person or provide legal services in particular circumstances,

(b) stating the order of precedence of courts,

(c) securing that, where reasonably practicable, any person wishing to be represented before any court by one of its providers holding an appropriate right of audience is so represented.

(9) For the purposes of the rules required under subsection (8), the Inner and Outer Houses of the Court of Session and the High Court of Justiciary exercising its appellate jurisdiction may be treated as separate courts.

(10) Regulations under subsection (1) are subject to the affirmative procedure.

27 Publication of draft regulatory scheme and representations

(1) A body making an application under section 25 must—

(a) make a copy of its draft regulatory scheme available electronically for the duration of the relevant period,

(b) at the time of making the application, place an advertisement containing the information described in subsection (2) in the Edinburgh Gazette and in a daily newspaper circulating throughout Scotland.

(2) An advertisement required under subsection (1)(b) must state that—

(a) a copy of the draft regulatory scheme is available electronically during the relevant period,

(b) written representations concerning the draft scheme may be made to the Lord President and the Scottish Ministers, and

(c) for such representations to be considered, they must meet the requirements described in subsection (4).

(3) Any person may make written representations concerning a draft regulatory scheme during the relevant period.

(4) Representations under subsection (3) must—

(a) be made to both the Lord President and the Scottish Ministers, and

(b) be received by them before the expiry of the relevant period.

(5) In this section—

“draft regulatory scheme” in relation to an application made under section 25, means the draft regulatory scheme required to accompany the application under section 25(4),

“relevant period” in relation to an application under section 25, means the period of six weeks beginning with the date on which the application is made.

Consideration and grant

28 Consideration of applications

- 5 (1) The Lord President and the Scottish Ministers (acting together) are to consider an application submitted under section 25(1) and must—
- (a) consult each other in considering the application, and
 - (b) consider any written representations made to them in accordance with section 27(3) and (4).
- 10 (2) The Lord President and the Scottish Ministers may not consider the application if they are not satisfied that the requirements of section 27 have been, and are being, complied with.
- (3) The Lord President and the Scottish Ministers—
- (a) may, either jointly or separately, make preliminary observations to the body in relation to the draft regulatory scheme accompanying the application, and
 - (b) must, if making an observation separately, send a copy of it to the other.
- 15 (4) In the event that the body makes adjustments to the draft regulatory scheme in response to preliminary observations made under subsection (3), the Lord President and the Scottish Ministers are to consider the draft scheme as so adjusted.
- 20 (5) The Lord President and the Scottish Ministers are, when considering a draft regulatory scheme, to have regard to whether the provisions of the scheme would be sufficient to achieve, and to ensure the maintenance of, appropriate standards of conduct and practice by persons who may acquire the rights sought.
- 25 (6) In considering the proposed practice rules, the Lord President is to have regard to the desirability of there being common principles applying in relation to the exercising of rights to conduct litigation and rights of audience by all practitioners in relation to the court or, as the case may be, the courts, mentioned in the application.
- 30 (7) Subsection (8) applies in relation to the Scottish Ministers’ consideration of proposed practice rules that form part of the regulatory scheme accompanying an application which is to acquire (either or both of) the rights listed in paragraph (a) or (b) of section 25(2) only.
- 35 (8) The Scottish Ministers are to consider only such rules as would, in their view, inhibit the freedom of an authorised provider of the body to undertake all the work necessary for the preparation of a case or for the presentation of a case before the court, other than such a provision which has that effect only by reason of the provision made in the draft regulatory scheme with respect to the matters mentioned in section 26(2).

29 Approval of application and giving effect to the regulatory scheme

- (1) This section applies where the Lord President and the Scottish Ministers have considered an application in accordance with section 28.

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- (2) If the Lord President and the Scottish Ministers—
- (a) are satisfied with the draft regulatory scheme, the Lord President is to approve the application and inform the body,
 - (b) are not satisfied with the draft scheme, the Lord President is to refuse the application and inform the body, giving written reasons for the refusal.
- (3) The Lord President must send a copy of a letter approving or refusing an application under this section to any person who has made representations in relation to the draft regulatory scheme under section 27(3).
- (4) Where the application has been approved, the Scottish Ministers must, as soon as reasonably practicable—
- (a) by regulations make provision to give effect to the draft regulatory scheme, and
 - (b) lay before the Scottish Parliament draft regulations under section 8(5) to assign the body as a category 1 or category 2 regulator.
- (5) Regulations under subsection (4)(a) are subject to the negative procedure.
- (6) For the purposes of this Part, a body which has its application approved under this section is referred to as an accredited regulator.

Exercise of the acquired rights

30 Exercise of rights to provide legal services

- (1) This section applies when the provision required to give effect to a regulatory scheme of an accredited regulator by virtue of section 29(4) is in force and the regulator is assigned as a category 1 or category 2 regulator.
- (2) A legal services provider that is authorised by the accredited regulator may exercise an acquired right (or rights).
- (3) Nothing in subsection (2) (or the authorisation rules of the regulatory scheme) affects the power of any court in relation to any proceedings—
- (a) to hear a person who would not otherwise have a right of audience before that court in relation to those proceedings, or
 - (b) to refuse to hear a person (for reasons which apply to the person as an individual) who would otherwise have a right of audience before that court in relation to those proceedings, and where a court so refuses it must give its reasons to the person for that decision.
- (4) Where a conduct complaint is made in relation to the exercise of an acquired right, the accredited regulator of the legal services provider that is the subject of the complaint may, or if so requested by the Lord President must, suspend the provider from exercising the acquired right pending determination of the complaint by the regulator.
- (5) Where an authorised provider who is authorised to exercise a right of audience in a court is instructed to appear in that court, those instructions are to take precedence before any other professional or business obligation.
- (6) An authorised provider exercising a right of audience has the same immunity from liability for negligence in respect of the provider's acts or omissions as if the provider were an advocate.

(7) An act or omission on the part of an authorised provider does not give rise to an action for breach of contract in relation to the exercise of a right of audience by the provider.

(8) For the purposes of this Chapter—

“acquired right” means the right or rights to provide legal services specified and described in a regulatory scheme given effect to under section 29,

“conduct complaint” is to be construed in accordance with Part 1 of the 2007 Act,

“right of audience” includes, in relation to any court, any such right exercisable by an advocate,

“right to conduct litigation” means the right to exercise on behalf of a client all or any of the functions, other than any right of audience, which may be exercised by a solicitor in relation to litigation.

31 Surrender of rights

(1) An accredited regulator may apply to the Lord President and the Scottish Ministers to surrender some or all of the acquired rights.

(2) As soon as practicable after receipt of such an application, the Scottish Ministers must—

(a) send a copy of the application to—

(i) each of the body’s authorised providers, and

(ii) such other person or body as they consider appropriate, and

(b) consult them accordingly.

(3) The consultees under subsection (2) have a period of 6 weeks beginning with the day on which a copy of the application is sent (or, if the Scottish Ministers consider it appropriate, such shorter period as may be specified when sending a copy to the consultees) to make representations to the Scottish Ministers about the proposed surrender.

(4) The Scottish Ministers are to provide copies of any representations received under subsection (3) to the Lord President.

(5) The Lord President and the Scottish Ministers (acting together) may give directions (at any time) as to the requirements with which a body wishing to surrender all or some of its authorised providers’ acquired rights will have to comply.

(6) Directions under subsection (5) may, in particular—

(a) require arrangements to be made for the completion of any work outstanding at the time the application is made, and

(b) relate to the circumstances of a particular body.

(7) An application under subsection (1) must describe the manner in which the body has complied, or will comply, with any direction given.

(8) Where the Lord President and the Scottish Ministers are satisfied that the body concerned have complied, or will comply, with any directions given, the Lord President is to—

(a) grant the application in respect of some or all of the acquired rights, and

(b) give notice to the body specifying the date (or dates) on which it is to take effect.

- (9) From the date specified in the notice, a person authorised by the body to provide legal services ceases to be authorised and may not exercise the acquired rights or, if applicable, such of them as has been surrendered.

32 Offence of pretending to have acquired rights

- 5 (1) A person commits an offence if the person with intent to deceive—
- (a) takes or uses any name, title, addition or description implying that the person is authorised to exercise an acquired right,
 - (b) otherwise pretends to be authorised to exercise an acquired right.
- 10 (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Review of regulatory scheme

33 Review of regulatory schemes

- 15 (1) An accredited regulator may, or at the joint request of the Lord President and the Scottish Ministers must—
- (a) review its regulatory scheme, and
 - (b) propose such revisions to the scheme as it considers appropriate in light of the review.
- 20 (2) Following a review, the accredited regulator must give the Lord President and the Scottish Ministers a report on the review containing any revisions it proposes to make to its regulatory scheme (if any).
- (3) Where the Lord President and the Scottish Ministers agree that the terms of any proposed revision to the regulatory scheme are satisfactory—
- (a) the Lord President is to approve the revised scheme and inform the accredited regulator, and
 - 25 (b) the Scottish Ministers must, as soon as reasonably practicable, by regulations make such provision as is necessary to give effect to the revised regulatory scheme.
- (4) Subsection (5) applies where the Lord President and the Scottish Ministers agree—
- (a) that—
- 30 (i) the proposed revisions to the scheme are not satisfactory, or
 - (ii) revisions should have been proposed (but have not been), and
- (b) as to the revisions that should be made to the regulatory scheme.
- (5) Where this subsection applies—
- 35 (a) the Scottish Ministers may direct the accredited regulator to apply the revisions agreed with the Lord President to the regulatory scheme from such date as may be specified in the direction, and
 - (b) the Scottish Ministers must, as soon as reasonably practicable, by regulations make such provision as is necessary to give effect to the revised regulatory scheme.

(6) Where the Lord President is, or the Scottish Ministers are, of the view that the terms of any proposed revision to the regulatory scheme are not satisfactory, but they do not agree as to what the terms of the scheme should be, the scheme is to continue to have effect as previously approved.

5 (7) Regulations under this section are subject to the negative procedure.

34 Revocation of acquired rights

(1) Where it appears to the Scottish Ministers that an accredited regulator has failed to comply with a direction under section 33(5), they may by regulations revoke the approval of the application under section 29.

10 (2) Regulations under subsection (1)—

- (a) may only be made with the prior agreement of the Lord President, and
- (b) are subject to the affirmative procedure.

(3) From such date as may be specified in regulations made under subsection (1), a person authorised by the accredited regulator ceases to be so authorised and may not exercise the rights acquired by virtue of that authorisation.

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Miscellaneous

35 Replacement regulatory arrangements for authorised providers

(1) The Scottish Ministers may by regulations make provision—

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- (a) establishing a body with a view to it becoming a regulator for the purposes of regulating the authorised providers of a discontinuing regulator,
- (b) amending the regulatory functions of a particular category 1 or category 2 regulator to enable it to regulate the authorised providers of a discontinuing regulator, or
- (c) specifying circumstances under which the Scottish Ministers or a body specified in the regulations may directly authorise and regulate the authorised providers of a discontinuing regulator.

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(2) Regulations under subsection (1)(c) may provide for this Part to apply with or subject to such modifications as the regulations may specify.

(3) No regulations are to be made under this section without the agreement of the Lord President.

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(4) Except where subsection (5) applies, regulations under this section are subject to the affirmative procedure.

(5) This subsection applies where the Scottish Ministers believe that their intervention is necessary, as a matter of urgency, in order to ensure that the provision of legal services by authorised providers is regulated effectively.

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(6) Where subsection (5) applies, regulations under subsection (1)—

- (a) must be laid before the Scottish Parliament as soon as reasonably practicable after they have been made, and

(b) cease to have effect at the end of the period of 40 days beginning with the day on which they are made unless, during that period, they are approved by resolution of the Scottish Parliament.

(7) In calculating the period of 40 days for the purpose of subsection (6)(b), no account is to be taken of any period during which the Scottish Parliament is—

- (a) in recess for more than 4 days, or
- (b) dissolved.

(8) If regulations cease to have effect as a result of subsection (6)(b), that does not—

- (a) affect the validity of anything previously done under them, or
- (b) prevent the making of new regulations.

(9) For the purpose of this section, “discontinuing regulator” means an accredited regulator that—

- (a) has made an application under section 31,
- (b) is the subject of regulations to revoke its approval under section 34,
- (c) has ceased operating otherwise than in accordance with grant of an application under section 31 or revocation under section 34, or
- (d) in the opinion of the Scottish Ministers, is likely to cease operating otherwise than in accordance with grant of an application under section 31 or revocation under section 34.

36 Consequential amendments and repeals

(1) Sections 25 to 29 and schedule 2 of the 1990 Act are repealed.

(2) Section 40 of the 1990 Act (advisory and supervisory functions of the CMA) is amended as follows.

(3) In subsection (1), for paragraph (c) substitute—

“(c) considering—

- (i) any provisions of a draft regulatory scheme under section 28 of the Regulation of Legal Services (Scotland) Act 2023, or
- (ii) any provision which is proposed as a revision to a regulatory scheme under section 33 of that Act.”.

(4) Section 42 of the 1990 Act (review of rules approved by the Scottish Ministers) is amended as follows.

(5) In subsection (1)—

- (a) paragraph (b) and the word “or” immediately preceding that paragraph are repealed,
- (b) in the closing words—

- (i) the words “and, where the Lord President, in the case of a draft scheme such as is mentioned in paragraph (b), so requests shall” are repealed,
- (ii) the words “or, as the case may be, the scheme” are repealed.

- (6) In subsection (2)—
- (a) in the opening words—
 - (i) the words “or, as the case may be, a scheme,” are repealed,
 - (ii) the words “or scheme” in both places they appear, are repealed,
 - (b) paragraph (b) and the word “or” immediately preceding that paragraph are repealed.
- (7) Subsections (4) to (6) are repealed.
- (8) In subsection (7)—
- (a) the words “and schemes” where they first appear are repealed,
 - (b) the words “and schemes submitted under section 25(1) of this Act” are repealed.

37 Transitional and saving provision for regulators approved under the 1990 Act

Sections 31, 33 and 34 apply to a professional or other body whose application under section 25 of the 1990 Act was approved under section 26 of that Act as they apply to a body whose application for accreditation under section 25 of this Act was approved under section 29 of this Act.

PART 2

REGULATION OF LEGAL BUSINESSES

Introductory

38 Overview of Part

- (1) This Part makes provision for category 1 regulators to authorise legal businesses to provide legal services.
- (2) Section 39—
- (a) defines what constitutes a legal business (and associated expressions) for the purpose of this Part, and
 - (b) makes it an offence for a legal business to provide legal services without being authorised by the appropriate regulator of that business.
- (3) Section 40 makes it an offence to pretend, with intent to deceive, to be an authorised legal business.
- (4) Sections 41 to 46 require category 1 regulators to prepare and operate rules to authorise and regulate legal businesses.
- (5) Section 47 deals with how a category 1 regulator is to monitor and investigate the performance of authorised legal businesses.
- (6) Section 48 and Part 2 of schedule 1 (which amends the 1980 Act)—
- (a) enable the Law Society to authorise (and regulate) legal businesses,
 - (b) reflect that incorporated practices (within the meaning of section 34 of the 1980 Act) are to be authorised as a type of legal business.

- (7) Section 49 confers powers on the Scottish Ministers, with the agreement of the Lord President, to become directly involved in the regulation of legal businesses in circumstances where it is necessary to do so.
- (8) Section 50 makes provision for where a body must change its regulatory regime by virtue of changing the manner in which it is owned.

Requirement to be authorised to provide legal services

39 Requirement for legal businesses to be authorised to provide legal services

- (1) A legal business may provide legal services to the public for fee, gain or reward only if it is authorised to do so by the category 1 regulator that is responsible for the regulation of the owners of the legal business.
- (2) For the purposes of this Part, a legal business is a business which provides (or offers to provide) legal services to the public for fee, gain or reward that—
- (a) consists of—
 - (i) a solicitor, or
 - (ii) a qualifying individual, or
 - (b) is wholly owned by—
 - (i) a solicitor or solicitors, or
 - (ii) a qualifying individual or individuals.
- (3) A category 1 regulator is responsible for the regulation of the owner of a legal business if the owner is a member of the regulator or is otherwise subject to its regulation in respect of the legal services the owner provides.
- (4) It is an offence for a person to own or operate a legal business which provides legal services to the public for fee, gain or reward without that business being authorised in accordance with this Part.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding £20,000.
- (6) The Scottish Ministers may by regulations amend subsection (5) to substitute a different amount of fine for the one for the time being specified there.
- (7) Regulations under subsection (6) are subject to the negative procedure.
- (8) For the purpose of this section, a “qualifying individual” means an individual, other than a solicitor, whose provision of legal services is regulated by a category 1 regulator.
- (9) In this Part—
- (a) a reference to an authorised legal business of a category 1 regulator is a reference to a legal business that is authorised to provide legal services by the relevant regulator,
 - (b) a reference to the relevant category 1 regulator, in relation to an authorised legal business, is a reference to the category 1 regulator which authorises the legal business.

40 Offence of pretending to be an authorised legal business

- (1) A person commits an offence if the person with intent to deceive—
- (a) takes or uses any name, title, addition or description implying that the person is an authorised legal business,
 - (b) otherwise pretends to be an authorised legal business.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000.
- (3) The Scottish Ministers may by regulations amend subsection (2) to substitute a different amount of fine for the one for the time being specified there.
- (4) Regulations under subsection (3) are subject to the negative procedure.

Regulation of authorised legal businesses

41 Rules for authorised legal businesses

- (1) A category 1 regulator must—
- (a) make rules for authorising and regulating legal businesses (“ALB rules”),
 - (b) apply its ALB rules in relation to the legal businesses for which it is responsible, and
 - (c) make its ALB rules publicly available.
- (2) ALB rules are to—
- (a) contain—
 - (i) authorisation rules,
 - (ii) practice rules,
 - (b) include provision for reconciling different sets of regulatory rules, and
 - (c) deal with such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as the regulations may specify).
- (3) ALB rules may—
- (a) relate to—
 - (i) one or more types of legal business,
 - (ii) some or all legal services,
 - (b) make different provision for different cases or types of case.
- (4) A category 1 regulator may amend its ALB rules (or any of them), but—
- (a) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,
 - (b) the Scottish Ministers may not give their approval without—
 - (i) the Lord President’s agreement, and
 - (ii) consulting such other person or body as they consider appropriate.

- (5) In preparing (or amending) its ALB rules, a category 1 regulator must consult—
- (a) its members,
 - (b) the Lord President,
 - (c) the Competition and Markets Authority,
 - 5 (d) the Commission,
 - (e) the independent advisory panel of the Commission,
 - (f) Consumer Scotland, and
 - (g) such other persons or bodies it considers appropriate.
- (6) The Scottish Ministers may by regulations—
- 10 (a) confer authority for the ALB rules of category 1 regulators to deal with the provision by their authorised legal businesses of such other services (in addition to legal services) as the regulations may prescribe, and
 - (b) specify the extent to which (and the manner in which) the ALB rules may do so.
- (7) Regulations under this section are subject to the affirmative procedure.

15 **42 Authorisation rules**

- (1) For the purposes of this Part, the authorisation rules are rules about—
- (a) the procedure for becoming an authorised legal business, including (in particular)—
 - (i) the making of applications,
 - (ii) the criteria to be met by applicants,
 - 20 (iii) the determination of applications,
 - (iv) the grant of authorisation,
 - (b) the terms on which authorisation is granted including, in particular, attaching conditions or restrictions to the grant,
 - (c) the—
 - 25 (i) renewal of a legal business's authorisation,
 - (ii) circumstances in which authorisation may or must be reviewed, suspended or withdrawn,
 - (d) the fees that are (or may be) chargeable by the regulator in connection with authorisation, including—
 - 30 (i) fees for renewing authorisations, and
 - (ii) fees in respect of such specified special purposes as may be agreed with authorised legal businesses in a manner set out in the rules.
- (2) Rules made in pursuance of subsection (1)(a) to (c) must allow for review by the category 1 regulator of any decision made by it under the rules that materially affects an applicant for authorisation or (as the case may be) an authorised legal business.
- 35

(3) Authorisation rules must—

- (a) state that an application for authorisation may be refused on the ground that the applicant appears to be incapable (for any reason) of complying with the regulatory scheme of the regulator,
- 5 (b) provide for how a licensed provider may become an authorised legal business,
- (c) provide for grounds for non-renewal, suspension or withdrawal of authorisation where the legal business is breaching (or has breached) the regulatory scheme of the regulator or other rules of professional practice that apply to it,
- 10 (d) set out how the fees that are chargeable in connection with authorisation are determined (which may be by reference to the financial performance of an authorised legal business in relation to its provision of legal services in or as regards Scotland).

(4) Authorisation rules may include such further rules or arrangements as to authorising legal businesses for which provision is (in the category 1 regulator's opinion) necessary or expedient.

15

43 Appeals in relation to authorisation decisions

- (1) An appeal against a relevant authorisation decision may be made to the sheriff by—
- (a) an applicant for authorisation under rules made in pursuance of section 42, or
- (b) an authorised legal business.
- 20 (2) An appeal under subsection (1) must be made within the period of 3 months beginning with the day on which the relevant authorisation decision is intimated to the applicant or, as the case may be, authorised legal business.
- (3) A relevant authorisation decision is a decision taken under authorisation rules made in pursuance of this Part to—
- 25 (a) refuse an application for—
- (i) authorisation of a legal business, or
- (ii) renewal of a legal business's authorisation,
- (b) attach conditions or restrictions to the grant of its authorisation, or
- (c) suspend or withdraw its authorisation.
- 30 (4) In the appeal, the sheriff may—
- (a) uphold, vary or quash the decision,
- (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
- (5) The sheriff's determination in the appeal is final.

44 Practice rules

35

- (1) For the purposes of this Part, the practice rules are rules about—
- (a) the—
- (i) operation and administration of authorised legal businesses,

- (ii) standards to be met by authorised legal businesses,
- (b) the operational positions within authorised legal businesses,
- (c) accounting and auditing,
- (d) professional indemnity,
- 5 (e) the making and handling of any complaint about an authorised legal business,
- (f) the measures that may be taken by the regulator, in relation to an authorised legal business, if—
 - (i) there is a breach of the regulatory scheme of the regulator, or
 - (ii) a complaint referred to in paragraph (e) is upheld.
- 10 (2) Without limit to the generality of subsection (1), practice rules must—
 - (a) require authorised legal businesses to—
 - (i) comply with the regulator’s ALB rules and the terms on which authorisation is granted including, in particular, any conditions or restrictions which have been imposed,
 - 15 (ii) have regard to the regulatory objectives described in section 2(1)(a) to (c),
 - (iii) adhere to the professional principles,
 - (iv) have proper accounting and auditing procedures,
 - (v) have sufficient arrangements for professional indemnity, and
 - (vi) co-operate with reviews of, and investigations into, their performance,
 - 20 (b) include provision that it is a breach of the ALB rules for an authorised legal business to fail to comply with—
 - (i) its duties under this Part, and
 - (ii) duties under any other enactment specified in the scheme, and
 - (c) allow an authorised legal business to make representations to the regulator before the regulator takes any of the measures available to it under the rules.
- 25 (3) Practice rules may include such further arrangements as to the professional practice, conduct or discipline of authorised legal businesses for which provision is (in the regulator’s opinion) necessary or expedient.

45 **Financial sanctions**

- 30 (1) Practice rules made in pursuance of section 44(1)(f) may provide for the imposition of a financial penalty.
- (2) The Scottish Ministers may by regulations specify the maximum amount of a financial penalty that may be imposed by virtue of subsection (1).
- (3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the regulator may collect it on their behalf).
- 35 (4) An authorised legal business may appeal against a financial penalty (or the amount of a financial penalty) imposed on it 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 it.

(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.

5 (6) In the appeal, the sheriff may—

(a) uphold, vary or quash the decision,

(b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.

(7) The sheriff's determination in the appeal is final.

10 (8) Regulations under subsection (2)—

(a) are subject to the negative procedure, and

(b) may not be made without the agreement of the Lord President.

46 Reconciling different rules

15 (1) The provision required by section 41(2)(b) to be in the ALB rules is such provision as is reasonably practicable (and appropriate in the circumstances) for—

(a) preventing or resolving regulatory conflicts, and

(b) avoiding unnecessary duplication of regulatory rules (for example, by applying existing regulatory rules in so far as possible).

(2) For the purposes of this section, a regulatory conflict is a conflict between (any of)—

20 (a) the ALB rules of a category 1 regulator,

(b) any other professional or regulatory rules made by the regulator in respect of the persons who provide legal services that it regulates, and

25 (c) any professional or regulatory rules made by any other body which regulates the provision of legal or other services by the persons regulated by the category 1 regulator.

(3) The Scottish Ministers may by regulations make further provision about regulatory conflicts (such as may involve a category 1 regulator).

(4) Before making regulations under subsection (3), the Scottish Ministers must have the Lord President's agreement.

30 (5) Regulations under subsection (3) are subject to the negative procedure.

47 Monitoring of performance of authorised legal businesses

(1) A category 1 regulator is to carry out a review of the performance of an authorised legal provider—

(a) at such time or in such circumstances as the regulator considers appropriate, or

35 (b) when requested to do so by the Lord President.

- (2) A review under this section may (in particular) examine—
- (a) the authorised legal business’s compliance with—
 - (i) its duties under this Act and any other enactment,
 - (ii) the terms on which its authorisation is granted including any conditions or restrictions attached to the grant,
 - (b) the financial sustainability of the business,
 - (c) such other matters as the regulator considers appropriate.
- (3) A request for the review of an authorised legal business under subsection (1)(b) must—
- (a) set out, by reference to the matters that may be reviewed, why the Lord President considers a review appropriate, and
 - (b) be copied to the authorised legal business which is to be reviewed.
- (4) When conducting a review of an authorised legal business, a category 1 regulator may—
- (a) require the business to produce any relevant document or other information (either at the business’s premises or otherwise),
 - (b) interview any person who owns, is employed by, or is otherwise involved with the business.
- (5) Following a review, the category 1 regulator must—
- (a) prepare a report on its review, and
 - (b) send a copy of its report to—
 - (i) the authorised legal business, and
 - (ii) if the review was requested under subsection (1)(b), the Lord President.
- (6) Before finalising the report, the category 1 regulator must—
- (a) send a draft of the report to the authorised legal business, and
 - (b) give it a reasonable opportunity to make representations about—
 - (i) the findings of the report, and
 - (ii) any action the business may be required to take or steps that may be taken by the regulator as a result of the review.

Miscellaneous

48 Law Society of Scotland

- (1) The Law Society must prepare its ALB rules in accordance with section 41 within such period (not exceeding 3 years from the date on which this section comes into force) as it may agree with the Lord President.
- (2) The Law Society may use its powers to make rules under the 1980 Act to make the rules necessary to comply with its duties as a category 1 regulator under this Part.
- (3) Part 2 of schedule 1 contains provision amending the 1980 Act in respect of the Law Society’s functions of authorising and regulating legal businesses.

49 Powers of the Scottish Ministers to intervene

- (1) The Scottish Ministers may by regulations make provision—
- (a) establishing a body with a view to it becoming a category 1 regulator for the purposes of this Part,
 - (b) specifying circumstances under which the Scottish Ministers may directly authorise and regulate legal businesses.
- (2) Regulations under subsection (1)(b) may provide for this Part to apply with or subject to such modifications as the regulations may specify.
- (3) No regulations are to be made under this section—
- (a) without the agreement of the Lord President, and
 - (b) unless the Scottish Ministers believe that their intervention is necessary, as a last resort, in order to ensure that the provision of legal services by legal businesses is regulated effectively.
- (4) Regulations under this section are subject to the affirmative procedure.

50 Entities changing regulatory regime

- (1) Subsection (2) applies where a licensed provider becomes an authorised legal business.
- (2) The licensed provider is deemed, by virtue of this subsection, to continue to be so licensed from that time until the earliest of the following events—
- (a) the end of the period of 90 days beginning with the day on which that time falls,
 - (b) the time from which the relevant category 1 regulator determines this subsection is to cease to apply to the provider, or
 - (c) the time when the provider ceases to be an authorised legal business.
- (3) Subsection (4) applies where an authorised legal business becomes a licensed provider.
- (4) The authorised legal business is deemed, by virtue of this subsection, to continue to be so authorised from that time until the earliest of the following events—
- (a) the end of the period of 90 days beginning with the day on which that time falls,
 - (b) the time from which the approved regulator that regulates (or regulated) the licensed provider determines this subsection is to cease to apply to the authorised legal business, or
 - (c) the time when the authorised legal business ceases to be a licensed provider.

PART 3

COMPLAINTS

51 Change of name to the Scottish Legal Services Commission

- (1) The 2007 Act is amended as follows.
- (2) The title of Part 1 becomes “THE SCOTTISH LEGAL SERVICES COMMISSION”.

- (3) In section 1 (the Scottish Legal Complaints Commission), in subsection (1), for “Complaints” substitute “Services”.
- (4) The title of section 1 becomes “**The Scottish Legal Services Commission**”.
- (5) In section 46(1) (interpretation of Part 1), in the definition of “the Commission”, for “Complaints” substitute “Services”.
- (6) The title of schedule 1 becomes “**THE SCOTTISH LEGAL SERVICES COMMISSION**”.

52 Receipt of complaints: preliminary steps

- (1) The 2007 Act is amended as follows.
- (2) The italic heading before section 2 becomes “*Conduct, services and regulatory complaints*”.
- (3) In section 2 (receipt of complaints: preliminary steps)—
- (a) in subsection (1), for paragraph (b) substitute—
- “(b) suggesting that—
- (i) professional services were inadequate where they were provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client, or
- (ii) legal services were inadequate where they were provided by a person other than a practitioner to the public for fee, gain or reward,
- (a complaint suggesting any such matter being referred to in this Part as a “services complaint”),
- (c) suggesting that an authorised legal business is failing (or has failed) to comply with—
- (i) the practice rules forming part of the rules for authorising and regulating the legal business made by the relevant professional organisation under (or for the purposes of) section 41(1)(a) of the 2023 Act, or
- (ii) the terms on which its authorisation is granted by the relevant professional organisation including any conditions or restrictions attached to the grant,
- (a complaint suggesting any such matter being referred to in this Part as a “regulatory complaint”).”
- (b) after subsection (1) insert—
- “(1ZA) A complaint as mentioned in subsection (1)(b)(ii) suggesting that legal services provided by a person other than a practitioner were inadequate—
- (a) may include a complaint suggesting that the manner in which legal services were provided by the person was inadequate,
- (b) but is not an eligible services complaint for the purposes of this Part where the Commission considers, in accordance with any provision in rules made under section 32(1), that the legal services provided by the

person were merely incidental to other services (not being legal services) provided by the person.

5 (1ZB) Where a services complaint is made in relation to a practitioner who is an individual and the Commission considers that the complaint should also be made against the practitioner's firm or (as the case may be) where the practitioner is an employee of another practitioner that other practitioner (referred to in this Part as the "employing practitioner"), the Commission may decide to treat the complaint as—

10 (a) also having been made against the practitioner's firm or the employing practitioner (as the case may be), or

(b) having been made against the practitioner's firm or the employing practitioner (as the case may be) instead of the practitioner.”,

(c) for subsection (1A) substitute—

15 “(1A) The Commission must, subject to any provision in rules made under section 32(1) as to eligibility for making complaints, determine whether the complaint constitutes (to any extent)—

(a) a conduct complaint,

(b) a services complaint,

(c) a regulatory complaint, or

20 (d) any combination of more than one of the categories of complaint mentioned in paragraphs (a) to (c).

(1B) For the purpose of subsection (1A), the Commission may determine—

(a) where the complaint includes more than one element, that—

25 (i) an element constitutes a complaint falling within a category mentioned in paragraphs (a) to (c) of subsection (1A), and

(ii) another element constitutes a separate complaint falling within another of those categories,

(b) that any element of the complaint—

30 (i) constitutes a complaint falling within a category mentioned in paragraphs (a) to (c) of subsection (1A), and

(ii) additionally constitutes a complaint falling within another of those categories,

(for example, a single element of the complaint may constitute both a conduct complaint and a services complaint).”,

35 (d) in subsection (2), in paragraph (a), after “complaint” insert “or a regulatory complaint”,

(e) the following subsections are repealed—

(i) subsection (2A),

(ii) subsection (2B),

40 (iii) subsection (2C),

(iv) subsection (4),

(f) after subsection (4), insert—

“(5) This section also applies to a complaint against a practitioner—

(a) that is initiated by the Commission itself (following a determination by it that a complaint should be made by it), and

(b) which, had it been received by the Commission by or on behalf of a person mentioned in subsection (2), would be a conduct complaint, a services complaint or a regulatory complaint (and subsection (1A) applies to such a complaint as it applies to a complaint mentioned in subsection (1)).

(6) Where the Commission initiates a complaint as mentioned in subsection (5), the Commission must notify in writing the following persons of the initiation of the complaint—

(a) the practitioner to whom the complaint relates,

(b) the relevant professional organisation,

(c) in the case of a conduct complaint or a services complaint, where the practitioner was at the time it is suggested the conduct complained of occurred or the professional services complained of were provided (as the case may be) an employee of an employing practitioner, the employing practitioner, and

(d) any other person considered by the Commission to have an interest in the complaint.”.

53 Ineligible or premature complaints

(1) Section 4 (complaint not made timeously or made prematurely) of the 2007 Act is amended as follows.

(2) The section title becomes “**Complaint not eligible or made prematurely**”.

(3) For subsection (1), substitute—

“(1) Where the Commission considers that a complaint referred to in section 2(1) is not an eligible complaint in accordance with any provision in rules made under section 32(1), the Commission need not take any further action under this Part in relation to the complaint (except the giving of notice to the complainer, the practitioner and any other person as may be required under such rules).”.

(4) For subsection (2), substitute—

“(2) Where a complaint referred to in section 2(1) is made prematurely, the Commission need not take any further action under this Part in relation to the complaint (except the giving of notice to the complainer, the practitioner and any other person as may be required by rules made under section 32(1)).”.

(5) The following subsections are repealed—

(a) subsection (3),

(b) subsection (5),

(c) subsection (6).

(6) In subsection (4)—

(a) in the opening words, the words “or section 9A(2)” are repealed,

(b) in paragraph (a), for the words from “where” to “(“employing practitioner”)” substitute “the employing practitioner”.

54 Commission process relating to complaints

(1) The 2007 Act is amended as follows.

(2) In section 6 (complaint determined to be conduct complaint)—

(a) for subsection (1), substitute—

“(1) This section applies where the Commission determines that a complaint referred to in section 2(1) is—

(a) wholly a conduct complaint, or

(b) includes one or more elements constituting a conduct complaint.”,

(b) in subsection (2)—

(i) in paragraph (a), after “complaint” where it first occurs insert “(or the part of the complaint constituting a conduct complaint)”,

(ii) paragraph (b) is repealed,

(c) after subsection (2), insert—

“(3) It does not matter for the purpose of subsection (1) (and the application of this section) whether the Commission’s determination mentioned in that subsection follows its earlier determination that the complaint is a services complaint (to any extent) and, having investigated the complaint, the Commission subsequently determines that it is instead a conduct complaint (to any extent).”.

(3) Section 7 (services complaint: notice) is repealed.

(4) In section 8 (services complaint: local resolution or mediation)—

(a) for subsection (1), substitute—

“(1) Subsection (2) applies where the Commission determines that a complaint referred to in section 2(1) that is made by or on behalf of a person referred to in section 2(2)(b)(i)—

(a) constitutes (in whole or in part) a services complaint, and

(b) either—

(i) the complaint has been made prematurely (within the meaning of section 4(4)), or

(ii) the practitioner, the practitioner’s firm or the employing practitioner has made no attempt, or an insufficient attempt, to achieve a negotiated settlement with the complainer.”,

(b) in subsection (2)—

- (i) the words from “Where” to the end of paragraph (b) are repealed, and
- (ii) for “such a negotiated settlement” substitute “a negotiated settlement with the complainer”.

- 5 (5) In section 9 (services complaint: Commission’s duty to investigate and determine), in subsection (2), for “must” substitute “may”.
- (6) Section 9A (services complaint: further provision) is repealed.
- (7) Section 12 (services complaint: notice where not upheld or upheld) is repealed.
- 10 (8) Section 15 (complaint appears during mediation or investigation to fall within different category) is repealed.

55 Regulatory complaints against authorised legal businesses

- (1) The 2007 Act is amended as follows.
- (2) After section 7, insert—

“7A Complaint determined to be a regulatory complaint

- 15 (1) This section applies where the Commission determines that a complaint referred to in section 2(1) is—
- (a) wholly a regulatory complaint, or
 - (b) includes one or more elements constituting a regulatory complaint.
- (2) The Commission must remit the complaint (or the part of the complaint constituting a regulatory complaint) to the relevant professional organisation to deal with (and give to the organisation any material which accompanies the regulatory complaint).
- 20 (3) It does not matter for the purpose of subsection (1) (and the application of this section) whether the Commission’s determination mentioned in that subsection follows its earlier determination that the complaint is a services complaint (to any extent) and, having investigated the complaint, the Commission subsequently determines that it is instead a regulatory complaint (to any extent).”.
- 25 (3) After section 52A (inserted by section 68(3)), insert—

“52B Regulatory complaints: duty of regulator to investigate etc.

- 30 (1) Where a regulatory complaint is remitted to the relevant professional organisation under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)), the relevant professional organisation must investigate it.
- 35 (2) After investigating a regulatory complaint, the relevant professional organisation must make a written report to the complainer, the practitioner and the Commission of—
- (a) the facts of the matter as found by the relevant professional organisation, and

(b) what action the relevant professional organisation proposes to take, or has taken, in the matter in accordance with the rules for authorising and regulating legal businesses made by the relevant professional organisation under (or for the purposes of) section 41(1)(a) of the 2023 Act.

5 (3) Each relevant professional organisation must ensure that its procedures for dealing with regulatory complaints do not conflict with the duty imposed on it by section 24(4) in relation to any report sent to it under that section or any direction by the Commission under section 24(2).

10 (4) In this section, words and expressions have the same meanings as in section 46.

52C Regulatory complaints: application of powers and restrictions under sections 48 to 52

15 (1) Sections 48 to 52 (and schedule 4) apply for the purposes of an investigation by a relevant professional organisation of a regulatory complaint under section 52B as they apply for the purposes of an investigation by a relevant professional organisation of a conduct complaint under section 47 with the modification referred to in subsection (2).

20 (2) The modification is that in each of sections 48 to 52 (and schedule 4), the references to the investigation of a conduct complaint under section 47 are to be treated as if they were references to the investigation of a regulatory complaint under section 52B.”

56 Services complaint: sanctions

(1) The 2007 Act is amended as follows.

(2) In section 10 (Commission upholds services complaint)—

25 (a) after subsection (3), insert—

“(3A) In the case where a direction under subsection (2)(c) is made to the employing practitioner, the direction may relate to systems operated by the employing practitioner that affect the provision of professional services generally by the employing practitioner where that is relevant to the complaint.”

30 (b) in subsection (4)—

(i) paragraph (c) is repealed,

(ii) after paragraph (c) (and before the closing words), insert—

35 “(d) decision taken by a relevant professional organisation in respect of a conduct complaint, or a regulatory complaint, against the practitioner where the conduct complaint, or the regulatory complaint, arises from the same matter to which the services complaint relates.”

(3) After section 12, insert—

“12A Services complaint upheld: failure to refund fees and outlays

- (1) This section applies where—
- (a) under section 10(2)(a), the Commission directs the practitioner or the employing practitioner (as the case may be) to refund an amount in respect of fees or outlays of the practitioner already paid by or on behalf of the client to whom the professional services were provided by the practitioner (such amount being referred to in this section as “the fee refund”),
 - (b) any proportion of the fee refund has not been paid by the expiry of the period of 90 days commencing on the day on which notice of the direction was given to the practitioner or the employing practitioner in accordance with rules made under section 32(1), and
 - (c) the failure to pay any proportion of the fee refund within that period is—
 - (i) where the direction was given to the practitioner, as a result of the death, insolvency or involuntary cessation of trade of the practitioner,
 - (ii) where the direction was given to the employing practitioner, as a result of the insolvency or involuntary cessation of trade of the employing practitioner.
- (2) The proportion of the fee refund that has not been paid is to be treated for the purposes of the practitioner’s or the employing practitioner’s (as the case may be) professional indemnity insurance as if it were an amount of compensation that the Commission had directed under section 10(2)(d) the practitioner or employing practitioner to pay to the complainer.
- (3) But subsection (2) applies only to the extent that the amount of the fee refund that has not been repaid, taken together with any amount of compensation that the Commission directed the practitioner or the employing practitioner to pay to the complainer under section 10(2)(d), does not exceed £35,000.
- (4) The Scottish Ministers may by regulations amend subsection (3) to substitute a different amount for the one for the time being specified there.
- (5) Before making regulations under subsection (4), the Scottish Ministers must consult—
- (a) the relevant professional organisations, and
 - (b) such groups of persons representing consumer interests as they consider appropriate.”.

57 Commission decision making and delegation

- (1) The 2007 Act is amended as follows.
- (2) In schedule 1, in paragraph 13(2) (delegation of functions)—
- (a) paragraph (a) is repealed,
 - (b) paragraph (b)(ii) is repealed,

(c) after paragraph (d), insert—

“(e) the function of making a decision under section 23(2) to be exercised only by any of its committees,

(f) the function of making a direction under section 24(2) to be exercised only by any of its committees.”

58 Commission review committee

(1) The 2007 Act is amended as follows.

(2) In section 13 (services complaint: reports)—

(a) after subsection (1A) (inserted by section 59(2)) insert—

“(1B) Subsections (1) and (1A) are subject to subsection (5).”

(b) after subsection (4) insert—

“(5) Subsections (1) and (1A) do not apply in relation to—

(a) a determination of a complaint under section 9(1) that is not upheld following an application for review under section 20A(1),

(b) a determination, direction or report under section 10(2) that is not upheld following an application for review under section 20A(1).

(6) Where the review committee upholds a services complaint or confirms a determination under section 9(1) to uphold a services complaint, the reference in subsection (1)(b)(ii) to a determination of the complaint under section 9(1) is to be treated as a decision of the review committee under section 20A(6).

(7) Where the review committee decides under section 20A(6) to direct that a step mentioned in section 10(2) be taken, subsection (1)(c) is to be read as if the reference to “under section 10(2)” were a reference to “as is mentioned in section 10(2) that is directed to be taken by the review committee in its decision under section 20A(6)”.

(3) After section 20, insert—

“Reviews

20A Applications to review committee

(1) A person mentioned in subsection (2) may make an application for a review of a decision by the Commission in relation to a complaint that is mentioned in subsection (3).

(2) The persons are—

(a) the complainer,

(b) the practitioner to whom the complaint relates,

(c) the practitioner’s firm,

(d) the employing practitioner,

(e) the relevant professional organisation.

- (3) The decisions are—
- (a) a decision by the Commission that a complaint referred to in section 2(1) is or is not an eligible complaint in accordance with any provision in rules made under section 32(1),
 - 5 (b) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a conduct complaint) to the relevant professional organisation under section 6(2),
 - (c) a decision to remit a complaint referred to in section 2(1) (that is
10 determined by the Commission to be a regulatory complaint) to the relevant professional organisation under section 7A(2),
 - (d) a decision to discontinue the investigation of a services complaint in accordance with section 9(1A)(a),
 - (e) a decision to reinstate the investigation of a services complaint in accordance with section 9(1A)(b),
 - 15 (f) a determination under section 9(1) to uphold a services complaint,
 - (g) a determination under section 9(1) to not uphold a services complaint,
 - (h) a decision to take any of the steps mentioned in section 10(1) other than—
 - 20 (i) a direction to the practitioner to pay compensation to the complainer, or
 - (ii) a decision as to the amount of such compensation to be paid under the direction.
- (4) Subject to subsection (5), an application for review must—
- 25 (a) in the case of a review of a decision mentioned in subsection (3)(a), (b), (c) or (e), be made before the expiry of the period of 14 days beginning with the day on which notice of the decision was given to the complainer and the practitioner,
 - 30 (b) in the case of a review of another decision mentioned in subsection (3), be made before the expiry of the period of 28 days beginning with the day on which notice of the decision was given to the complainer and the practitioner.
- (5) The review committee may decide that it may consider an application for a review of a decision under subsection (1) that is made after the expiry of the period referred to in subsection (4) if it considers that to be appropriate.
- 35 (6) Following a review, the review committee may make such decision as it considers appropriate (including a decision that substitutes its own decision for the decision to which the application for review relates).
- (7) Where a decision of the review committee upholds a services complaint or confirms a determination under section 9(1) to uphold a services complaint,
40 the review committee may direct that such of the steps mentioned in section 10(2) as it considers fair and reasonable in the circumstances be taken.
- (8) A decision of the review committee under this section is final.”.

- (4) The following provisions are repealed—
- (a) section 21 (appeal against Commission decisions) (and the italic heading before it),
 - (b) section 22 (appeal: supplementary provision).

- 5 (5) In schedule 1 (the Scottish Legal Complaints Commission)—

(a) in paragraph 10 (procedure), in sub-paragraph (2), for “determination” substitute “review”,

(b) in paragraph 11 (committees)—

10 (i) in sub-paragraph (1)(a), for “determination”, in both places where it occurs, substitute “review”,

(ii) in sub-paragraph (3), for “determination” substitute “review”,

(c) in paragraph 13 (delegation of functions), for sub-paragraph (2)(d), substitute—

15 “(d) the function of considering an application for review of a decision of the Commission under section 20A(1) to be exercised only by the review committee, but a review in respect of any of the following decisions may be taken by a single member of the review committee—

(i) a decision by the Commission that a complaint referred to in section 2(1) is or is not an eligible complaint in accordance with any provision in rules made under section 32(1),

20 (ii) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a conduct complaint) to the relevant professional organisation under section 6(2),

25 (iii) a decision to remit a complaint referred to in section 2(1) (that is determined by the Commission to be a regulatory complaint) to the relevant professional organisation under section 7A(2),

(iv) a decision to reinstate the investigation of a services complaint in accordance with section 9(1A)(b).”.

59 Services complaints: reports

- (1) Section 13 of the 2007 Act is amended as follows.

- 30 (2) After subsection (1), insert—

35 “(1A) Where the Commission identifies that a number of services complaints against a particular practitioner have resulted in an outcome mentioned in any of paragraphs (a) to (c) of subsection (1) (or any combination of the same), the Commission may, if it considers it appropriate to do so, publish a report relating to the complaints and the outcomes.”.

- (3) After subsection (2), insert—

“(2A) A report under subsection (1A) must not—

(a) mention the name of a complainer without the complainer’s consent,

40 (b) include any particulars which, in the opinion of the Commission, are likely to identify any complainer without the complainer’s consent.”.

(4) In subsection (3), after “subsection (1)” insert “or (1A)”.

(5) In subsection (4), for paragraph (a) substitute—

“(a) either—

(i) in relation to a report under subsection (1), the case is exceptional,

(ii) in relation to a report under subsection (1A), the circumstances or number of complaints is exceptional.”

60 Disclosure of information by practitioners etc. to the Commission and relevant professional organisations

(1) The 2007 Act is amended as follows.

(2) In section 17 (power to examine documents and demand explanations in connection with conduct or services complaints)—

(a) the title of the section becomes “**Power to examine documents and demand explanations in connection with complaints**”,

(b) after subsection (3), insert—

“(3A) Nothing in a notice under subsection (1) requires a practitioner, a practitioner’s firm or an employing practitioner to provide a document or information that is subject to legal privilege.

(3B) But subsection (3A) does not prevent the disclosure of a document or information that is the subject of another right of confidentiality (regardless of whether or not the client of the practitioner, practitioner’s firm or employing practitioner consents to the disclosure).

(3C) For the purpose of subsection (3A), a document or information is subject to legal privilege if it constitutes a communication—

(a) between the practitioner, the practitioner’s firm or the employing practitioner and the client of the practitioner, practitioner’s firm or employing practitioner, or

(b) made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.”

(3) In section 37 (obtaining of information from relevant professional organisations), after subsection (2) insert—

“(2A) Subsection (1) does not require the provision of a document or information to the Commission that is subject to legal privilege.

(2B) But subsection (2A) does not prevent the disclosure of a document or information that is the subject of another right of confidentiality (regardless of whether or not the client of the practitioner, practitioner’s firm or employing practitioner concerned consents to the disclosure).

(2C) For the purpose of subsection (2A), a document or information is subject to legal privilege if it constitutes a communication—

(a) between the practitioner and the practitioner’s client, or

(b) made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.”.

(4) In section 48 (conduct complaints and reviews: power of relevant professional organisations to examine documents and demand explanations), after subsection (2) insert—

“(2A) Nothing in a notice under subsection (1) requires a practitioner, a practitioner’s firm or an employing practitioner to provide a document or information that is subject to legal privilege.

(2B) But subsection (2A) does not prevent the disclosure of a document or information that is the subject of another right of confidentiality (regardless of whether or not the client of the practitioner, practitioner’s firm or employing practitioner consents to the disclosure).

(2C) For the purpose of subsection (2A) a document or information is subject to legal privilege if it constitutes a communication—

(a) between the practitioner, the practitioner’s firm or the employing practitioner and the client of the practitioner, practitioner’s firm or employing practitioner, or

(b) made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.”.

61 Power of Commission to request practitioner’s details in connection with complaints

(1) The 2007 Act is amended as follows.

(2) After section 17, insert—

“17A Power of Commission to request practitioner’s details in connection with complaints

(1) Where the Commission is satisfied that it is necessary to do so in relation to a complaint referred to in section 2(1) made against a practitioner for a purpose mentioned in subsection (3), the Commission may request that the relevant professional organisation provide any contact details for the practitioner that are held by the relevant professional organisation.

(2) The relevant professional organisation must provide any details that are requested under subsection (1) that are held by the relevant professional organisation to the Commission as soon as practicable.

(3) The purpose referred to in subsection (1) is for the purpose of—

(a) section 2, 4, 8, 9, 10 or 16, or

- (b) any provision in rules made under section 32(1) but only in so far as the provision in the rules relates to the categorisation of complaints.”.

62 Services complaints: special provision for complaints against unregulated persons

- (1) The 2007 Act is amended as follows.

- (2) After section 22, insert—

“Services complaints: special provision for complaints against unregulated persons

22A Services complaints: special provision for complaints against unregulated persons

- (1) Subject to subsection (2), the following provisions apply in relation to a services complaint against a person who was not a practitioner at the time when the legal services complained of were provided but who was providing legal services to the public for fee, gain or reward (an “unregulated provider”) as the provisions apply in relation to a services complaint against a practitioner—

- (a) section 2,
- (b) section 3,
- (c) section 4,
- (d) section 8,
- (e) section 9,
- (f) section 10,
- (g) section 11,
- (h) section 12A,
- (i) section 13,
- (j) section 14,
- (k) section 16,
- (l) section 17,
- (m) section 18,
- (n) section 19,
- (o) section 20,
- (p) section 20A,
- (q) section 35,
- (r) section 40, and
- (s) schedule 2.

- (2) The provisions referred to in subsection (1) apply in relation to an unregulated provider against whom a services complaint is made subject to the following modifications—

- (a) references to “inadequate professional services” are to be read as if they were references to “inadequate legal services” (meaning, in relation to

an unregulated provider, legal services that are in any respect not of the quality which could reasonably be expected of a competent unregulated provider),

- 5 (b) references to the practitioner against whom a complaint is made are to be read as including references to the unregulated provider against whom a complaint is made,
- (c) references to a “practitioner’s firm” are to be read as if they were omitted,
- 10 (d) references to an “employing practitioner”, in relation to a practitioner, are to be read as if they were references to the employer (if any) of the unregulated provider against whom a complaint is made,
- (e) references to a “relevant professional organisation” are to be read as if they were omitted,
- 15 (f) where the unregulated provider against whom a complaint is made is in the employment of another person, references in section 10 to “employee practitioner” are to be read as if they were references to the unregulated provider,
- (g) section 10(2) is to be read as if paragraph (e) were omitted.”.

63 Handling complaints

(1) The 2007 Act is amended as follows.

20 (2) In section 23 (handling by relevant professional organisations of conduct complaints: investigation by Commission)—

(a) for subsection (1A) substitute—

“(1A) In this Act, a “handling complaint” means—

(a) a complaint which—

25 (i) relates to the manner in which a conduct complaint has been dealt with by a relevant professional organisation to which it has been remitted under section 6(2) (or is treated under section 33A(2) as if it were remitted under section 6(2)), and

(ii) is made—

30 (A) by or on behalf of the person by whom or on whose behalf the conduct complaint was made, or

(B) by the practitioner concerned in the conduct complaint, or

(b) a complaint which—

35 (i) relates to the manner in which a regulatory complaint has been dealt with by the relevant professional organisation to which it has been remitted under section 7A(2) (or is treated under section 33B(2) as if it were remitted under section 7A(2)), and

(ii) is made—

40 (A) by or on behalf of the person by whom or on whose behalf the regulatory complaint was made, or

- (B) by the authorised legal business concerned in the regulatory complaint.”,
- (b) subsections (3) and (6) are repealed,
- (c) in subsection (4), in paragraph (a), after “conduct complaint” insert “or regulatory complaint”,
- (d) in subsection (8), after “conduct complaint” insert “or regulatory complaint”,
- (e) subsection (10) is repealed.
- (3) In section 24 (investigation under section 23: final report and recommendations)—
- (a) the title of the section becomes “**Investigation under section 23: final report and directions**”,
- (b) in subsection (1)(b)(ia), after “conduct complaint” insert “or regulatory complaint”,
- (c) in subsection (2)—
- (i) in the opening words, for “recommendations” substitute “directions to the relevant professional organisation”,
- (ii) in paragraph (a), after “conduct complaint” insert “or regulatory complaint”,
- (iii) in paragraph (b), after “conduct complaint” insert “or regulatory complaint”,
- (iv) in paragraph (c), after “conduct complaint” insert “or regulatory complaint”,
- (d) in subsection (3)—
- (i) for “recommendation”, where it first occurs, substitute “direction”,
- (ii) for “making the recommendation” substitute “giving the direction”,
- (e) in subsection (4), for the words from “have” to the end of the subsection substitute “—
- (a) have regard to the conclusions set out in the report so far as they relate to the organisation, and
- (b) comply with any direction given in the report—
- (i) within such time period as may be specified in the report, or
- (ii) within such extended period of time for compliance as may be agreed between the Commission and the relevant professional organisation.”,
- (f) the following subsections are repealed—
- (i) subsection (5),
- (ii) subsection (6),
- (iii) subsection (6A),
- (iv) subsection (6B),
- (v) subsection (7).
- (4) In section 25 (failure to comply with recommendation)—
- (a) the title of the section becomes “**Failure to comply with direction**”,

(b) in subsection (1), for “under section 24(6)” substitute “in a report under section 24 within the time period specified in the report or any extended period of time agreed between the Commission and the organisation”,

(c) in subsection (2), for the words from “recommendation” to the end of the subsection substitute “direction”.

64 Annual general levy and complaints levy

(1) The 2007 Act is amended as follows.

(2) In section 27 (annual general levy)—

(a) in subsection (1)—

(i) for paragraph (c) substitute—

“(c) person who has acquired a right to provide legal services by virtue of Chapter 3 of Part 1 the 2023 Act (or section 27 of the 1990 Act),”

(ii) after paragraph (d), insert—

“(e) authorised legal business.”

(b) in subsection (2)(a), for “paragraphs (a) to (d)” substitute “paragraphs (a) to (e)”,

(c) in subsection (4), in the opening words, for “paragraphs (a) to (d)” substitute “paragraphs (a) to (e)”,

(d) for subsection (5) substitute—

“(5) If any person who is liable under subsection (1) to pay the annual general levy (“the liable person”) fails to pay any amount of the levy, or pays any such amount late—

(a) where the liable person is an individual, the failure to pay or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the liable person,

(b) where the liable person is not an individual and where the failure to pay or late payment involves the connivance or consent of (or is attributed to the neglect of) a responsible official of a liable person, the failure to pay or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the responsible official.

(6) In subsection (5), a “responsible official” of a liable person is—

(a) where the liable person is a company, a director, secretary, manager or other similar officer,

(b) where the liable person is a limited liability partnership, a member,

(c) where the liable person is an ordinary partnership, a partner,

(d) where the liable person is another body or association, a person who is concerned in the management or control of its affairs,

but in each case also extends to a person purporting to act in such a capacity.”

(3) In section 28 (complaints levy)—

(a) in subsection (1), for “mentioned in subsection (2)” substitute “specified in rules made under section 32(1)”,

(b) subsection (2) is repealed,

(c) for subsection (4) substitute—

“**(4)** If any practitioner who is liable under subsection (1) to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late—

(a) where the practitioner is an individual, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the practitioner,

(b) where the practitioner is not an individual and where the failure or late payment involves the connivance or consent of, or is attributed to the neglect of, a responsible official of the practitioner, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct by the responsible official.

(5) In subsection (4), a “responsible official” of a practitioner is—

(a) where the practitioner is a company, a director, secretary, manager or other similar officer,

(b) where the practitioner is a limited liability partnership, a member,

(c) where the practitioner is an ordinary partnership, a partner,

(d) where the practitioner is another body or association, a person who is concerned in the management or control of its affairs,

but in each case also extends to a person purporting to act in such a capacity.”.

(4) In section 29 (amount of levies and consultation)—

(a) in subsection (1), after paragraph (b) (but before the closing words), insert—

“(c) annual contribution,

(d) complaints contribution,”,

(b) in subsection (2), for the words from “must” to the end of the subsection substitute “may be—

(a) of different amounts for different persons (or persons of different descriptions) who are liable under section 27(1) to pay it, including different amounts for persons who are individuals and persons who are not,

(b) of different amounts (including nil) in different circumstances based on such criteria (such as the size and income of a person who is not an individual who is liable under section 27(1) to pay the annual general levy) as rules made under section 32(1) may specify.”,

(c) after subsection (2) insert—

“(2A) Rules under section 32(1) may provide for circumstances in which the Commission may waive a portion of the amount of annual general levy which would otherwise require to be paid.”,

(d) in subsection (5)(a), in sub-paragraph (ii), for “and the complaints levy” substitute “, the complaints levy, the annual contribution and the complaints contribution”,

(e) for subsection (6) insert—

“(6) For the purpose mentioned in subsection (6A)—

5 (a) each relevant professional organisation must provide the Commission with an estimate of the number of persons as respects whom it is the relevant professional organisation and who it anticipates should be liable under section 27(1) to pay the annual general levy for the financial year concerned, and

10 (b) each relevant professional organisation that is a category 1 regulator must assist the Commission with its enquires in relation to the size and income of each authorised legal business that is authorised by the organisation to provide legal services.

15 (6A) The purpose referred to in subsection (6) is the purpose of informing the Commission in relation to—

(a) the inclusion in the Commission’s proposed budget for each financial year of the proposed amount of the annual general levy,

(b) the Commission’s determination under subsection (1) of the amount of the annual general levy in respect of each financial year.”,

20 (f) in subsection (7), for “and the complaints levy” substitute “, the complaints levy, the annual contribution and the complaints contribution”.

65 Unregulated providers of legal services: voluntary register, annual contributions and complaints contributions

(1) The 2007 Act is amended as follows.

25 (2) After section 28, insert—

“28A Unregulated providers of legal services: voluntary register and annual contribution

(1) The Commission may establish and maintain a voluntary register of unregulated providers of legal services.

30 (2) The Commission is to determine, in accordance with its rules under section 32(1), the information to be included in a register established under subsection (1).

(3) An unregulated provider of legal services may make a request to be entered in a register established under subsection (1).

35 (4) An unregulated provider of legal services who is entered in a register established under subsection (1) must pay to the Commission a contribution (referred to in this Part as “the annual contribution”).

(5) The amount of the annual contribution may be—

40 (a) different for unregulated providers of legal services who are individuals and unregulated providers of legal services who are not,

(b) of different amounts (including nil) in different circumstances.

- (6) The Commission must make the register accessible by members of the public in such form and manner as it considers appropriate.
- (7) In this section, a reference to an unregulated provider of legal services is to a person who provides legal services to the public for fee, gain or reward but who is not a practitioner.

28B Unregulated providers of legal services: upheld services complaints and complaints contribution

- (1) An unregulated provider of legal services against whom a services complaint is made must pay to the Commission, in the circumstances specified in rules made under section 32(1), a contribution in relation to the complaint (referred to in this Part as “the complaints contribution”).
- (2) The amounts of the complaints contribution may be—
- (a) of different amounts for different unregulated providers of legal services according to the amount of annual contributions (if any) paid by an unregulated provider of legal services,
 - (b) of different amounts (including nil) in different circumstances.
- (3) In this section, a reference to an unregulated provider of legal services has the same meaning as in section 28A(7).”.

66 Commission rules as to practice and procedure

- (1) The 2007 Act is amended as follows.
- (2) In section 32 (duty of Commission to make rules as to practice and procedure), in subsection (5)—
- (a) in paragraph (d), for “such” substitute “the independent advisory panel established under paragraph 11A of schedule 1 and such other”,
 - (b) after paragraph (d), insert—
 - “(e) such groups of persons representing the interests of the legal profession as it considers appropriate.”.
- (3) In schedule 3 (rules as to Commission’s practice and procedure)—
- (a) for paragraph 1 (provision which must be included), substitute—

“1 The rules as to the Commission’s practice and procedure made under section 32(1) must include provision about—

 - (a) the criteria to be met for a complaint to be considered eligible (including the time limit within which a complaint must be made and circumstances in which time limits may be extended),
 - (b) how a complaint is to be assessed with reference to eligibility criteria,
 - (c) the requirement for the complainer, for the purposes of Parts 1 and 2 of this Act, to waive any right of confidentiality in relation to the matters

to which the complaint relates and, without which, the Commission is not to—

- (i) remit a conduct complaint to a relevant professional organisation under section 6(2),
- 5 (ii) remit a regulatory complaint to a relevant professional organisation under section 7A(2),
- (iii) investigate a services complaint by virtue of section 9,
- (iv) investigate a handling complaint by virtue of section 23,
- 10 (v) remit a regulatory complaint to a relevant professional organisation under section 7A(2),
- (d) matters to be considered by the Commission in determining whether or not legal services provided by a person mentioned in section 2(1)(b)(ii) are merely incidental to the provision of other services (in determining whether a services complaint against such a person is an eligible complaint),
- 15 (e) how a complaint is to be categorised as a services complaint, a conduct complaint or a regulatory complaint (or any combination of the same and to any extent),
- (f) the circumstances in which the Commission may decide—
- 20 (i) to discontinue the investigation of a services complaint under section 9(1A)(a),
- (ii) to discontinue the investigation of a handling complaint under section 23(2)(b),
- (g) the circumstances in which the Commission may decide—
- 25 (i) to reinstate the investigation of a discontinued services complaint under section 9(1A)(b),
- (ii) to reinstate the investigation of a discontinued handling complaint under section 23(2)(c),
- (h) the manner in which a services complaint is to be investigated by the Commission (and by whom),
- 30 (i) hearings to be held by the Commission in relation to a services complaint or a handling complaint being dealt with by it under Part 1 which must require the Commission—
- 35 (i) to hold a hearing in relation to such a complaint where it considers it appropriate, and
- (ii) require the Commission to decide whether such a hearing should be public or private,
- (j) evidence, including—
- 40 (i) the evidence that may be required or admitted,
- (ii) the extent to which it may be oral or written,

-
- (iii) the consequences of a person's failure to produce any information or document which the person has been required to produce,
- (k) the manner in which a services complaint is to be determined by the Commission (and by whom),
- 5 (l) the manner in which a handling complaint is to be investigated and determined by the Commission,
- (m) the timing and the manner in which the Commission is to notify, in relation to a complaint, the complainer, practitioner and the practitioner's employer (if any) of its decisions including a decision—
- 10 (i) that a complaint referred to in section 2(1) is not an eligible complaint,
- (ii) not to investigate a handling complaint,
- (iii) that a complaint referred to in section 2(1) is eligible and whether it is being (or is to be) investigated by the Commission, the relevant professional organisation or both,
- 15 (iv) that the investigation of a complaint referred to in section 2(1), or a handling complaint, has been (or is to be) discontinued or reinstated,
- (v) whether or not a services complaint has been upheld by the Commission under section 9(1) and, if it has, any determination, direction or report by the Commission under section 10(2),
- 20 (vi) relating to an application for review under section 20A,
- (n) the membership of a review committee, including in particular provision requiring—
- 25 (i) that such a committee has at least 3 members, of which the majority are non-lawyer members of the Commission,
- (ii) that such a committee is chaired by a lawyer member of the Commission,
- (o) the procedure to be followed in connection with reviews under section 20A including—
- 30 (i) grounds on which an application for review will be considered eligible, including whether it has a reasonable prospect of success,
- (ii) notice to be given of applications and decisions,
- (iii) the manner in which reviews are to be conducted,
- 35 (p) the determination of the annual general levy, and the arrangements for payment of the levy, including—
- (i) the matters to be taken account of by the Commission in determining the amount of the annual general levy relating to practitioners who are not individuals which may be different in different circumstances such as the size and income of the practitioner,
- 40

(ii) arrangements to be made with a view to ensuring that the annual general levy is not payable more than once by or in relation to a individual practitioner within an authorised legal business,

5 (q) the circumstances in which the complaints levy is payable under section 28(1) by a practitioner against whom a services complaint is made,

(r) the circumstances in which the complaints contribution is payable under section 28B(1) by a person against whom a services complaint is made,

10

(s) the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) on any amount of the annual general levy due to be paid to the Commission by a relevant professional organisation under section 27(2)(b) from the date the amount is due under the rules until it is paid,

15

(t) the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) on any amount of the complaints levy due to the Commission from the date the amount is due under the rules until it is paid.

1A Rules under paragraph 1(o)(iii) must in particular provide that any member of the review committee considering a complaint must not have been involved in—

20

(a) any aspect of the investigation of the complaint (including considering the eligibility of the complaint),

(b) the steps to be taken by the Commission where, in the course of considering a services complaint, it considers it to be reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint,

25

(c) determining the complaint under section 9(1),

(d) making a determination under section 10(2) in relation the complaint.”,

(b) for paragraph 2 (provision which may in particular be included) substitute—

“2 The rules as to the Commission’s practice and procedure made under section 32(1) may in particular include provision about—

30

(a) the steps to be taken by the Commission where, in the course of considering a services complaint, it becomes aware of new information which causes it to decide that the complaint is not an eligible complaint,

35

(b) the steps to be taken by the Commission where, in the course of considering a services complaint, it considers it to be reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint,

40

(c) the steps to be taken by a relevant professional organisation where, in the course of considering a conduct or regulatory complaint, it considers it to be reasonably likely that the complaint (or any element of it) may instead constitute a services complaint,

(d) the circumstances in which the Commission is not prevented from considering a complaint which would otherwise be considered to have been made prematurely in accordance with the rules.”.

67 Conduct or regulatory complaint raised by relevant professional organisation

- (1) The 2007 Act is amended as follows.
- (2) In section 33 (duty of relevant professional organisations to forward complaints to Commission)—
- 5 (a) the existing provision becomes subsection (1),
- (b) after paragraph (b) of that subsection (and before the closing words) insert—
- “(c) the compliance by any authorised legal business that is authorised by the organisation to provide legal services with—
- 10 (i) the organisation’s practice rules forming part of the rules for authorising and regulating the authorised legal business made under (or for the purposes of) section 41(1)(a) of the 2023 Act, or
- (ii) the terms on which the authorisation of the authorised legal business is granted by the organisation including any conditions or restrictions attached to the grant,”
- 15 (c) after that subsection insert—
- “(2) Subsection (1)(a) is subject to section 33A(2) (conduct complaint identified by a relevant professional organisation).
- (3) Subsection (1)(c) is subject to section 33B(2) (regulatory complaint identified by relevant professional organisation.”.
- 20 (3) After section 33 insert—

“33A Conduct complaint identified by relevant professional organisation

- (1) This section applies where, in the course of exercising any of its functions conferred by or under this Act or the 2023 Act other than those relating to a handling complaint, a relevant professional organisation identifies a matter of concern regarding the conduct of a practitioner who is authorised by it to provide legal services (or whose firm or employing practitioner is so authorised).
- 25 (2) Despite subsection (1)(a) of section 33, the relevant professional organisation need not refer the matter (or any material relating to it) to the Commission under that subsection and may instead treat the matter as if it were a conduct complaint remitted to it under section 6(2) (and the conduct complaint is to be treated for the purposes of this Part as having been made by the relevant professional organisation).
- 30 (3) Where the relevant professional organisation treats the matter as mentioned in subsection (2), the relevant professional organisation must—
- 35 (a) have regard to the interests of any clients (or former clients) of the practitioner to whom the complaint relates (or clients or former clients of the practitioner’s firm or the employing practitioner) who may have been affected by the conduct of the practitioner, and
- 40 (b) as soon as practicable send details of the matter and any material relating to it to the Commission.

- 5 (4) For the purposes of subsection (3)(a), where the relevant professional organisation upholds the conduct complaint against the practitioner, the organisation must notify any client (or former client) of the practitioner (or the practitioner’s firm or the employing practitioner) whom it considers was directly affected by the conduct of the practitioner of the outcome of the complaint.
- 10 (5) Where the Commission receives details about a matter (and any material relating to it) under subsection (3)(b) from the relevant professional organisation, the Commission must consider the details (and any related material) provided to it to consider whether the matter constitutes a services complaint (to any extent).

33B Regulatory complaint identified by relevant professional organisation

- 15 (1) This section applies where, in the course of exercising any of its functions conferred by or under this Act or the 2023 Act other than those relating to a handling complaint, a relevant professional organisation itself identifies a matter of concern suggesting that an authorised legal business that is authorised by it to provide legal services is failing (or has failed) to comply with a matter mentioned in section 2(1)(c)(i) or (ii).
- 20 (2) Despite subsection (1)(c) of section 33, the relevant professional organisation need not refer the regulatory complaint (or any material relating to it) to the Commission and may treat the regulatory complaint as if it had been remitted to it by the Commission under section 7A(2) (and the regulatory complaint is to be treated for the purposes of this Part as having been made by the relevant professional organisation).
- 25 (3) Where the relevant professional organisation treats the regulatory complaint as mentioned in subsection (2), the organisation must as soon as practicable send details of the regulatory complaint (and any material relating to it) to the Commission.
- 30 (4) Where the Commission receives details about a regulatory complaint (and any material relating to it) under subsection (3) from the relevant professional organisation, the Commission must consider the details (and any related material) provided to it to consider whether the matter constitutes a services complaint (to any extent).”.

68 Conduct complaints: consideration by relevant professional organisations

- 35 (1) The 2007 Act is amended as follows.
- (2) In section 47 (conduct complaints: duty of relevant professional organisations to investigate etc.)—
- 40 (a) in subsection (2), for “and the practitioner” substitute “, the practitioner and the Commission”,
- (b) after subsection (2), insert—
- “(2A) A relevant professional organisation may proceed to investigate and make a written report in relation to a conduct complaint remitted to it as mentioned in subsection (1) even if the complainer withdraws the complaint (and in such

case the conduct complaint is to be treated for the purposes of Part 1 and this Part as having been made by the relevant professional organisation).”.

- (3) After section 52, insert—

“52A Conduct complaints: relevant professional organisation to take account of related services complaint

Where a relevant professional organisation (or associated tribunal) upholds a conduct complaint against a practitioner and is considering what steps to take in relation to the practitioner, the relevant professional organisation (or tribunal) must take account of any decision by the Commission in relation to a services complaint relating to the same matter to which the conduct complaint relates.”.

69 Complaints: monitoring and setting of minimum standards by the Commission

- (1) The 2007 Act is amended as follows.

- (2) In section 35 (services complaints: monitoring, reports, protocols and information sharing), in subsection (3)(a), for sub-paragraphs (i) to (vi), substitute “the Commission’s functions relating to services complaints dealt with by it”.

- (3) In section 36 (conduct complaints: monitoring, reports, guidance and recommendations)—

(a) the title of the section becomes “**Conduct and regulatory complaints: monitoring and reports**”,

(b) in subsection (1)—

(i) for paragraph (a), substitute—

“(a) practitioners have dealt with matters that result in—

(i) conduct complaints being remitted to the relevant professional organisations under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),

(ii) regulatory complaints being remitted to the relevant professional organisations under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)),”.

(ii) in paragraph (b), after “complaints” insert “or regulatory complaints”,

(c) subsections (3) and (4) are repealed,

(d) in subsection (5), for “conduct complaints remitted to them under section 6(2)(a) or 15(5)(a)” substitute “—

(a) conduct complaints remitted to them under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),

(b) regulatory complaints remitted to them under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).”.

- (4) After section 36, insert—

“36A Conduct and regulatory complaints: setting of minimum standards by the Commission

(1) The Commission may issue guidance to relevant professional organisations relating to how they are to investigate and determine the following complaints—

- 5 (a) conduct complaints that are remitted to them by the Commission under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),
- 10 (b) regulatory complaints that are remitted to them by the Commission under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).

(2) Guidance under subsection (1) may in particular—

- 15 (a) set minimum standards for relevant professional organisations in relation to the matters mentioned in that subsection,
- (b) include guidance as to the timescales within which relevant professional organisations should aim to complete their investigation of, or determine, complaints.

(3) Guidance under subsection (1)—

- 20 (a) may make different provision for—
- (i) different types of complaint,
- (ii) different acts or omissions (or series of acts or omissions) to which complaints may relate,
- (iii) different types of practitioner against whom complaints may be made,
- (b) may be issued to—
- 25 (i) each relevant professional organisation,
- (ii) a particular relevant professional organisation,
- (iii) relevant professional organisations of a particular description.

(4) Before issuing guidance under subsection (1) that sets minimum standards, the Commission must consult each relevant professional organisation concerned in relation to—

- 30 (a) the Commission’s initial proposals for the minimum standards that are to be set out in the guidance, and
- (b) a subsequent draft of the guidance that includes the proposed minimum standards.

35 (5) The Commission must publish any guidance issued under subsection (1) in such manner as it considers appropriate as soon as reasonably practicable after issuing the guidance.”.

(5) In section 40 (how practitioners deal with complaints: best practice notes)—

- (a) the existing text becomes subsection (1),

(b) in paragraph (a) of that subsection, for “or the professional services provided by them” substitute “, the professional services provided by them or regulatory matters”,

(c) after that subsection insert—

5 “(2) Guidance under subsection (1) may in particular set minimum standards for practitioners relating to how they are to deal with complaints made to them about the matters mentioned in paragraph (a) or (b) of that subsection.

10 (3) The Commission may issue guidance (which may set minimum standards) to relevant professional organisations relating to their role overseeing how practitioners deal with complaints to them made about the matters mentioned in subsection (1)(a) or (b).

15 (4) The Commission may issue guidance (which may set minimum standards) to practitioners in respect of practice (and any trends in practice) identified by it in the way in which practitioners deal with matters which the Commission considers contributes to—

(a) services complaints being dealt with by the Commission under sections 8 to 12,

20 (b) conduct complaints being remitted to the relevant professional organisations under section 6(2) (or treated as having been remitted to them under that section by virtue of section 33A(2)),

(c) regulatory complaints being remitted to the relevant professional organisations under section 7A(2) (or treated as having been remitted to them under that section by virtue of section 33B(2)).

25 (5) Guidance under subsection (1), (3) or (4) or may make different provision for—

(a) different types of complaint,

(b) different acts or omissions (or series of acts or omissions) to which complaints may relate,

(c) different types of practitioner against whom complaints may be made.

30 (6) Guidance under subsection (3) may be issued to—

(a) each relevant professional organisation,

(b) a particular relevant professional organisation,

(c) relevant professional organisations of a particular description.

35 (7) In subsection (1), “regulatory matters” means, in relation to an authorised legal business, failure by the authorised legal business to comply with either of the matters mentioned in section 2(1)(c)(i) or (ii).

40 (8) Where the Commission issues guidance under subsection (1) or (4) which sets minimum standards for practitioners, the relevant professional organisations for the practitioners to whom the minimum standards relate must notify the practitioners of the minimum standards set.

(9) Before issuing guidance under subsection (3) that sets minimum standards, the Commission must consult each relevant professional organisation concerned in relation to—

(a) the Commission’s initial proposals for the minimum standards that are to be set out in the guidance, and

(b) a subsequent draft of the guidance that includes the proposed minimum standards.

(10) The Commission must publish any guidance issued under this section in such manner as it considers appropriate as soon as reasonably practicable after issuing the guidance.”.

70 Compensation funds: setting of minimum standards by the Commission

(1) Section 39 of the 2007 Act (monitoring effectiveness of guarantee funds etc.) is amended as follows.

(2) After subsection (1), insert—

“(1A) The Commission may issue guidance (which may set minimum standards) to relevant professional organisations relating to the operation and effectiveness of the Guarantee Fund and any fund maintained by a relevant professional organisation which are for purposes analogous to those of the Guarantee Fund.”.

(3) In subsection (2)—

(a) the words “the Guarantee Fund,” are repealed,

(b) the words “funds or” are repealed.

(4) In subsection (3), after “subsections (1)” insert “, (1A)”.

(5) After subsection (4), insert—

“(5) Guidance under subsection (2) may be issued to—

(a) each relevant professional organisation,

(b) a particular relevant professional organisation,

(c) relevant professional organisations of a particular description.

(6) Before issuing guidance under subsection (2) that sets minimum standards, the Commission must consult each relevant professional organisation concerned in relation to—

(a) the Commission’s initial proposals for the minimum standards that are to be set out in the guidance, and

(b) the subsequent draft of the guidance that includes the proposed minimum standards.

(7) The Commission must publish any guidance issued under subsection (1A) in such manner as it considers appropriate as soon as reasonably practicable after issuing the guidance.”.

71 Enforcement of minimum standards

- (1) The 2007 Act is amended as follows.
- (2) After section 40, insert—

“40A Enforcement of minimum standards in relation to relevant professional organisations

- (1) A relevant professional organisation must meet any minimum standards set by the Commission that apply to it.
- (2) For the purpose of considering whether a relevant professional organisation is meeting any minimum standards that apply to it, the Commission may require from the relevant professional organisation—
 - (a) the production of information as to how it is meeting the minimum standards, and
 - (b) if the Commission is of the view that the relevant professional organisation is not (or has not been) meeting the minimum standards, an explanation of why the minimum standards are not being (or have not been) met.
- (3) Subsection (4) applies where the Commission considers that a relevant professional organisation, without reasonable excuse, is failing (or has failed) to meet the minimum standards in respect of which information was sought under subsection (2).
- (4) The relevant professional organisation and the Commission (“the parties”) must decide whether they are content for the dispute relating to the alleged failure to meet the minimum standards to be submitted to arbitration for resolution that is final and binding on the parties.
- (5) If both parties agree that the dispute is to be submitted to an arbitrator, the arbitrator is to be appointed—
 - (a) jointly by the parties, or
 - (b) in the absence of agreement for joint appointment, by the Lord President on a request made by either (or both) of the parties.
- (6) If the dispute is not submitted to arbitration, the Commission may direct the relevant professional organisation to take such steps as it considers appropriate within such period of time as may be specified in the direction.
- (7) The period of time specified in a direction under subsection (6) for the taking of such steps by the relevant professional organisation as the Commission considers appropriate may be extended by agreement between the parties.
- (8) The relevant professional organisation must, as soon as practicable following the expiry of the period of time referred to in subsection (6) (or such extended period of time referred to in subsection (7)), notify the Commission in writing of—
 - (a) the steps taken by or on behalf of the relevant professional organisation to comply with the direction, or

(b) if no such steps have been taken, or if not all steps necessary to comply with the direction have been taken, an explanation of the reason (or reasons) for the failure to comply with the direction.

5 (9) If the Commission considers that a relevant professional organisation has failed to comply with a direction under subsection (6), the Commission may apply to the court for the relevant professional organisation to be dealt with in accordance with subsection (10).

(10) Where such an application is made, the court may inquire into the matter and after hearing—

10 (a) any witnesses who may be produced against or on behalf of the relevant professional organisation, and

(b) any statement that may be offered in defence,

may order the relevant professional organisation to comply with the direction.

15 (11) In this section, “minimum standards” means minimum standards that are set out in any guidance issued under—

(a) section 36A(1),

(b) section 39(1A),

(c) section 40(3).

40B Enforcement of minimum standards in relation to practitioners

20 (1) A practitioner must meet any minimum standards set by the Commission that apply to the practitioner.

(2) For the purpose of considering whether a practitioner is meeting any minimum standards that apply to the practitioner, the Commission may require from the practitioner—

25 (a) the production of information as to how the practitioner is meeting the minimum standards, and

(b) if the Commission is of the view that the practitioner is not (or has not been) meeting the minimum standards, an explanation of why the minimum standards are not being (or have not been) met.

30 (3) Where the Commission considers that a practitioner, without reasonable excuse, is failing (or has failed) to meet the minimum standards in respect of which information was sought under subsection (2), the Commission may direct the practitioner to take such steps as it considers appropriate within such period of time as may be specified in the direction.

35 (4) The period of time specified in a direction under subsection (3) for the taking of such steps by the practitioner as the Commission considers appropriate may be extended by agreement between the Commission and the practitioner.

(5) The practitioner must, as soon as practicable following the expiry of the period of time referred to in subsection (3) or such extended period of time referred to in subsection (4), notify the Commission in writing of—

(a) the steps taken by or on behalf of the practitioner to comply with the direction, or

(b) if no such steps have been taken, or if not all steps necessary to comply with the direction have been taken, an explanation of the reason (or reasons) for the failure to comply with the direction.

(6) If the Commission considers that a practitioner has failed to comply with a direction under subsection (3), the Commission may apply to the court for the practitioner to be dealt with in accordance with subsection (7).

(7) Where such an application is made, the court may inquire into the matter and after hearing—

(a) any witnesses who may be produced against or on behalf of the practitioner, and

(b) any statement that may be offered in defence,

may order the practitioner to comply with the direction.

(8) In this section, “minimum standards” means minimum standards that are set out in any guidance issued under—

(a) section 40(1),

(b) section 40(4).”.

72 **Conduct complaints: power to impose unlimited fine and removal of power to award compensation**

(1) The 1980 Act is amended as follows.

(2) In section 42ZA (unsatisfactory professional conduct: Council’s powers)—

(a) in subsection (4), paragraph (c) is repealed,

(b) subsection (11) is repealed,

(c) subsection (12) is repealed,

(d) in subsection (13), paragraph (b) is repealed,

(e) in subsection (14), paragraph (b) is repealed.

(3) In section 53 of the 1980 Act (powers of tribunal)—

(a) in subsection (2)—

(i) paragraph (bb) is repealed,

(ii) paragraph (bc) is repealed,

(iii) in paragraph (c), for “not exceeding £10,000” substitute “of any amount”,

(b) in subsection (3A), for “subsection (2)(bb)” substitute “subsection (2)(c)”,

(c) subsection (7C) is repealed,

(d) subsection (9) is repealed.

- (4) In section 53ZB (powers of Tribunal on appeal: unsatisfactory professional conduct)—
- (a) in subsection (1), paragraph (f) is repealed,
 - (b) in subsection (2), paragraph (b) is repealed,
 - (c) in subsection (8), paragraph (b) is repealed,
 - (d) in subsection (9), paragraph (b) is repealed.
- (5) In section 54 (appeals from decisions of Tribunal)—
- (a) subsection (1D) is repealed,
 - (b) subsection (1E) is repealed,
 - (c) in subsection (1F), for “(1E)” substitute “(1C)”,
 - (d) in subsection (1G), the words “, (1D), (1E)” are repealed,
 - (e) subsection (2A) is repealed.
- (6) In section 55 (powers of Court)—
- (a) in subsection (1), paragraph (bc) is repealed,
 - (b) in subsection (5), paragraph (a) is repealed,
 - (c) in subsection (6), paragraph (a) is repealed.

73 Faculty of Advocates: complaint of professional misconduct and publication of decision

- (1) The 2010 Act is amended as follows.
- (2) In section 122 (Faculty of Advocates: particular rules), after subsection (4) insert—
- “(5) Rules regulating the discipline of advocates must—
- (a) require publication of a decision relating to a conduct complaint suggesting professional misconduct of an advocate that is remitted by the Scottish Legal Services Commission to the Faculty (or is treated as having been so remitted by virtue of section 33A(2) of the 2007 Act),
 - (b) require such a decision to include—
 - (i) detail of the facts established,
 - (ii) a statement of reasons for the making of the decision, and
 - (iii) where the complaint is upheld, information about any penalty imposed,
 - (c) where such a complaint is upheld, allow the Faculty to omit any information from the published decision which the Faculty considers would be likely to damage the interests of persons other than—
 - (i) the advocate against whom the complaint is made, or
 - (ii) the advocate’s partner or family,
- but subject to the Faculty publishing its reasons for any such omission,

- (d) where such a complaint is not upheld, allow the Faculty to omit the name of the advocate against whom the complaint is made from the published decision where it considers that to be appropriate.”.

74 Commission membership

- 5 (1) Schedule 1 (the Scottish Legal Complaints Commission) of the 2007 Act is amended as follows.
- (2) In paragraph 2 (membership of the Commission)—
- (a) in sub-paragraph (3), for “5” substitute “4”,
- (b) in sub-paragraph (4), for “3” substitute “4”.
- 10 (3) In paragraph 3 (terms of appointment etc.)—
- (a) in sub-paragraph (1), for “5” substitute “8”,
- (b) in sub-paragraph (5), for “3” substitute “4”.

75 Role of the independent advisory panel

- (1) Schedule 1 of the 2007 Act is amended as follows.
- 15 (2) In paragraph 11A, in sub-paragraph (2)—
- (a) in sub-sub-paragraph (c), for “Commission directs” substitute “panel considers appropriate”,
- (b) after sub-sub-paragraph (c), insert—
- 20 “(d) to make recommendations to the Commission in relation to any of the Commission’s functions as the panel considers appropriate,
- (e) to make recommendations to relevant professional organisations relating to any of their functions conferred under or by virtue of the 2023 Act,
- (f) such other functions as may be conferred on the panel by or under an enactment.”.

76 Commission reports

- 25 (1) Schedule 1 of the 2007 Act is amended as follows.
- (2) In paragraph 16 (reports), after sub-paragraph (1) insert—
- “1A) The report must, in particular—
- 30 (a) explain how the Commission has discharged its functions during the year in a manner which, in accordance with section 3(1) of the 2023 Act—
- (i) is compatible with the regulatory objectives (to be construed in accordance with sections 2 and 3 of the 2023 Act), and
- (ii) it considers is most appropriate to meet those objectives,
- 35 (b) provide a list of any directions given during the year to—
- (i) a relevant professional organisation under section 24(2),

- (ii) a relevant professional organisation under section 40A(6),
- (iii) a practitioner under section 40B(3),
- (c) include—
 - (i) information about compensation awarded during the year to complainers following services complaints, and
 - (ii) so far as it is known to the Commission, information about whether compensation awarded during the year has been paid.”.

77 Minor and consequential amendments

Parts 2 and 3 of schedule 3 contain minor amendments and amendments consequential on the provisions of this Part.

PART 4

MISCELLANEOUS

Licensed legal services providers

78 Removal of requirement to act for fee, gain or reward

In section 47 (licensed providers) of the 2010 Act, in subsection (1), the following provisions are repealed—

- (a) sub-paragraph (ii) of paragraph (a), and
- (b) the “and” immediately following that sub-paragraph.

79 Eligibility criteria: law centres

In section 48 (eligibility criteria) of the 2010 Act, in subsection (4)—

- (a) after paragraph (a) insert “or”,
- (b) the “or” immediately following paragraph (b) is repealed,
- (c) paragraph (c) is repealed.

80 Majority ownership

In section 49 (majority ownership) of the 2010 Act, in subsection (1), for “51%” substitute “10%”.

Removal of certain practising restrictions

81 Removal of practising restrictions: law centres, citizens advice bodies and charities

- (1) The 1980 Act is amended as follows.
- (2) In section 26(2) (offence for solicitors to act as agents for unqualified persons), for “or a citizens advice body” substitute “, a citizens advice body or a charity”.
- (3) In section 32 (offence for unqualified persons to prepare certain documents insert), in subsection (2B), at the end of the subsection insert—

“(c) a law centre, a citizens advice body or a charity.”.

(4) In section 33 (unqualified persons not entitled to fees etc.), for subsection (2) substitute—

“(2) This section does not apply—

- (a) to an incorporated practice,
- (b) to a licensed legal services provider,
- (c) to a law centre in so far as it (or a person within it) is providing legal services,
- (d) to a citizens advice body in so far as it (or a person within it) is providing legal services,
- (e) to a charity in so far as it (or a person within it) is providing legal services,
- (f) in relation to writs framed or drawn by a person who is, by virtue of an act of sederunt made under section 104(1) of Courts Reform (Scotland) Act 2014 (power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court), permitted to represent a party to a simple procedure case.”.

(5) After section 33B, insert—

“33BA Privilege of law centres, citizens advice bodies and charities from disclosure etc.

- (1) Any communication made to or by a law centre, a citizens advice body or a charity in the course of its providing legal services to a client will in any legal proceedings be privileged from disclosure in like manner as if the law centre, citizens advice body or charity (as the case may be) had at all material times been a solicitor providing legal services to a client.
- (2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, will, with any necessary modifications, have effect in relation to a law centre, a citizens advice body or a charity in the course of its providing legal services to a client as it has effect in relation to a solicitor.
- (3) This section is without prejudice to any other enactment or rule of law concerning professional or other privilege from disclosure (in particular, as applicable in relation to a solicitor).”.

(6) After section 33C, insert—

“33D Practice rules relating to law centres, citizens advice bodies and charities

- (1) Subsection (2) applies to any rule made under section 34 that prohibits or unduly restricts the—
 - (a) involvement of solicitors in or with, or employment of solicitors by, law centres, citizens advice bodies or charities, or
 - (b) provision of legal services by law centres, citizens advice bodies or charities.

(2) The rule is of no effect in so far as it does so (and for this purpose it is immaterial when the rule was made).

(3) The reference in subsection (1)(a) to solicitors does not include a solicitor who is disqualified from practice by reason of having been—

- (a) struck off (or removed from) the roll, or
- (b) suspended from practice.”.

(7) In section 65(1) (interpretation), at the appropriate place, insert—

““charity” means a body entered in the Scottish Charity Register.”.

Offences relating to pretending to be a regulated provider of legal services

82 Offence of taking or using the title of lawyer

(1) A person who is not entered in a register maintained under section 17 or, is not a licensed provider, commits an offence if the person with intent to deceive—

- (a) takes or uses the title of lawyer, and
- (b) does so in connection with providing (or offering to provide) legal services to the public for fee, gain or reward.

(2) Subsection (1) does not apply to a person who—

- (a) takes or uses the title of lawyer in connection with providing (or offering to provide) legal services in relation to a religious law, and
- (b) when doing so makes it clear that the person’s taking or using of the title of lawyer relates to the provision of legal services in relation to the religious law and not to the provision of legal services more generally.

(3) In subsection (2), “religious law” means the law, rules, beliefs or practices of a religion.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

83 Offence of pretending to be a regulated legal services provider

(1) A person who is not entered in the register maintained by a category 1 or category 2 regulator under section 17 commits an offence if the person with intent to deceive—

- (a) takes or uses a name, title, addition or description implying that the person is regulated by the category 1 or category 2 regulator, and
- (b) does so in connection with providing (or offering to provide) legal services to the public for fee, gain or reward.

(2) In subsection (1), “title” does not include the title of lawyer.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

84 Offence of pretending to be a member of Faculty of Advocates

- (1) A person who is not a member of the Faculty of Advocates commits an offence if the person with intent to deceive—
- 5 (a) takes or uses a name, title, addition or description implying that the person is a member of the Faculty of Advocates,
- (b) otherwise pretends to be a member of the Faculty of Advocates.
- (2) For the purpose of subsection (1), a person is a member of the Faculty of Advocates if the person is entered in the register maintained by the Faculty of Advocates under section 17.
- 10 (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

85 Time limit for prosecution of offences

- (1) Proceedings for an offence under section 32(1), 40(1), 82(1), 83(1) or 84(1) may be commenced within the period of 6 months beginning with the day on which relevant evidence came to the prosecutor's knowledge.
- 15 (2) But no such proceedings may be commenced more than 2 years—
- (a) after the commission of the offence, or
- (b) in the case of a continuous contravention, after the last day on which the offence was committed.
- 20 (3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.
- (4) A certificate signed by or on behalf of a prosecutor stating the day on which relevant evidence came to the prosecutor's knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being so signed unless the contrary is proved).
- 25 (5) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 applies for the purposes of this section as it applies for the purposes of that section.
- (6) In subsections (1) and (4), "relevant evidence" means evidence that the prosecutor believes is sufficient to justify the proceedings in question.

30 *Power of the Scottish Ministers to adjust restricted legal services*

86 Power of the Scottish Ministers to adjust restricted legal services

- (1) After section 32 of the 1980 Act (offence for unqualified person to prepare certain documents), insert—

“32A Power to adjust what constitutes restricted legal services

- 35 (1) The Scottish Ministers may by regulations amend section 32 to make provision for or in connection with it being an offence for an unqualified person to—
- (a) draw or prepare certain documents, or
- (b) provide certain other legal services.

- (2) In particular, regulations under this section may—
- (a) add, amend or remove a description of—
 - (i) a type of document that may not be drawn or prepared by an unqualified person without that person committing an offence,
 - (ii) a type of legal service that may not be provided by an unqualified person without that person committing an offence,
 - (b) add, amend or remove exemptions to the offence (including descriptions of persons to whom the offence does not apply) in relation to some or all of the documents or services that may not be drawn, prepared or, as the case may be, provided.
- (3) Before making regulations under this section, the Scottish Ministers must consult—
- (a) the Lord President,
 - (b) each category 1 regulator and category 2 regulator,
 - (c) each approved regulator within the meaning of Part 2 of the 2010 Act,
 - (d) the CMA.
- (4) Regulations made under this section are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).”.

- (2) The section title of section 32 becomes “**Offence for unqualified person to provide certain legal services**”.

Minor and consequential modifications

87 Modification of other enactments

Schedule 3 contains minor and consequential modifications of enactments.

PART 5

GENERAL

88 Individual culpability for offending by an organisation

- (1) Subsection (2) applies where—
- (a) an offence under this Act is committed by a relevant organisation, and
 - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
 - (i) a responsible official of the organisation, or
 - (ii) an individual purporting to act in the capacity of a responsible official.
- (2) The responsible official (or, as the case may be, the individual purporting to act in that capacity), as well as the organisation, commits the offence.

(3) “Relevant organisation” means—

- (a) a company,
- (b) a partnership (including a limited liability partnership),
- (c) another body or association.

5 (4) “Responsible official” means—

- (a) in the case of a company—
 - (i) a director, secretary, manager or similar officer, or
 - (ii) where the affairs of the company are managed by its members, a member,
- (b) in the case of a limited liability partnership, a member,
- 10 (c) in the case of a partnership other than a limited liability partnership, a partner,
- (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

89 Regulations

15 (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

- (a) different provision for different purposes,
- (b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) This section does not apply to section 92(3).

90 Ancillary provision

20 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

(2) Regulations under this section may modify any enactment (including this Act).

25 (3) Regulations under subsection (1)—

- (a) are subject to the affirmative procedure if they add to, replace or omit and part of the text of an Act, but
- (b) otherwise, are subject to the negative procedure.

91 Interpretation

30 (1) In this Act—

“1980 Act” means the Solicitors (Scotland) Act 1980,

“1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,

“2007 Act” means the Legal Profession and Legal Aid (Scotland) Act 2007,

35 “2010 Act” means the Legal Services (Scotland) Act 2010.

(2) In this Act, unless the context otherwise requires—

“accredited regulator” has the meaning given in section 29(6),

“advocate” means a practising member of the Faculty of Advocates,

“ALB rules” is to be construed in accordance with section 41(1),

5 “approved regulator of licensed providers” is to be construed in accordance with Part 2 of the 2010 Act,

10 “Association of Commercial Attorneys” means the private limited company, company number SC344543, that has acquired rights of audience for its members by virtue of having an application under section 25 of the 1990 Act granted under section 26 of that Act,

“authorised legal business” is to be construed in accordance with section 39(9)(a),

“category 1 regulator” (and cognate expressions) means a body that regulates the provision of legal services and which has been assigned as a category 1 regulator in or under section 8,

15 “category 2 regulator” (and cognate expressions) means a body that regulates the provision of legal services and which has been assigned as or deemed a category 2 regulator in or under section 8,

“the Commission” means the Scottish Legal Services Commission,

20 “the independent advisory panel of the Commission” is the independent advisory panel established by the Commission under paragraph 11A of schedule 1 of the 2007 Act,

“Law Society” means the Law Society of Scotland,

“legal services provider” has the meaning given in section 6(4),

25 “licensed legal services provider” (and “licensed provider”) is to be construed in accordance with Part 2 of the 2010 Act,

“Lord President” means the Lord President of the Court of Session,

“regulatory functions” in relation to a regulator, means its functions as a regulatory authority described in section 7,

“solicitor” is to be construed in accordance with section 65(1) of the 1980 Act.

30 **92 Commencement**

(1) This section and section 93 come into force on the day of Royal Assent.

(2) Sections 89 to 91 come into force on the day after Royal Assent.

(3) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

35 (4) Regulations under this section may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

93 Short title

The short title of this Act is the Regulation of Legal Services (Scotland) Act 2023.

SCHEDULE 1
Introduced by section 1(5)

LAW SOCIETY OF SCOTLAND

PART 1

CATEGORY 1 REGULATOR

5

Exercise of regulatory functions

1 (1) Section 3A of the 1980 Act (discharge of functions of the Council of the Law Society) is amended as follows.

10

(2) In subsection (11), in paragraph (a), for “3B to 3G” substitute “3B and 3D and Part 2 of the Regulation of Legal Services (Scotland) Act 2023”.

2 (1) Section 3B of the 1980 Act is amended as follows.

(2) In subsection (1), for “for the purpose mentioned in subsection (2)” substitute “in accordance with Part 2 of the Regulation of Legal Services (Scotland) Act 2023”.

(3) Subsection (2) is repealed.

15

(4) In subsection (3)—

(a) in the opening words “Accordingly” is repealed,

(b) paragraph (b) and the “or” immediately preceding it are repealed.

(5) After subsection (4), insert—

20

“(5) Paragraphs (b) and (c) of section 3A(9) do not apply to the Council’s regulatory functions.”.

3 The following sections of the 1980 Act are repealed—

(a) section 3C (particular rules applying),

(b) section 3E (further provision for section 3B etc.).

4 (1) Section 3F of the 1980 Act (meaning of regulatory functions) is amended as follows.

25

(2) In subsection (1), for “3B to 3E” substitute “3B and 3D”.

(3) For subsection (2), substitute—

“(2) Those functions include, in particular—

(a) setting standards for admission or authorisation and the ongoing training of the persons described in subsection (1),

30

(b) handling complaints about those persons,

(c) making regulatory rules under this Act and any other relevant enactment, and

(d) complying with the requirements imposed on the Council and the regulatory committee under the Regulation of Legal Services (Scotland) Act 2023 (in so far as provision is not made for those matters under this Act).”.

35

- 5 (1) Section 3G of the 1980 Act (extended meaning of regulatory functions under section 3F) is amended as follows.
- (2) In the opening words, for “3B to 3E” substitute “3B and 3D”.

Guarantee Fund

- 5 6 (1) Section 43 of the 1980 Act (Guarantee Fund) is amended as follows.
- (2) In subsections (1) to (7), for “Council”, in each place it occurs, insert “regulatory committee”.
- (3) After subsection (2), insert—
- 10 “(2A) The Guarantee Fund may also be used for the purpose of providing loans to judicial factors appointed in respect of any person described in subsection (2)(a) to (c) in order to mitigate the risk of any further pecuniary losses being suffered by the clients of such a person by reason of the dishonesty.”.
- (4) In subsection (5), the words from “they” to the end become paragraph (a) and after that paragraph insert—
- 15 “(b) the applicant has already made a claim for the loss in respect of a particular act of dishonesty unless the claim relates to a further loss of which the applicant was unaware (and could not reasonably have known about) at the time of making the original claim.”.
- (5) In subsection (6), for “any committee” substitute “a sub-committee or individual”.
- 20 (6) After section 43, insert—
- “43A Guarantee fund: further provision**
- (1) The Scottish Ministers may by regulations make provision in relation to the Guarantee Fund and may, in particular, modify section 43 and schedule 3.
- (2) Without limit to that generality, regulations made under this section may—
- 25 (a) make provision in relation to when grants are (or are not) to be made,
- (b) amend the maximum amount of an individual grant for the time being specified in paragraph 4 of Part 1 of schedule 3,
- (c) make provision in connection with the making of contributions to the Fund and its administration and management.
- 30 (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) the Lord President,
- (b) the regulatory committee, and
- (c) the independent advisory panel of the Commission established under paragraph 11A of schedule 1 of the 2007 Act.
- 35 (4) Regulations under subsection (1) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).”.
- 7 (1) Schedule 3 of the 1980 Act is amended as follows.

(2) In Part 1—

(a) in paragraphs 1(3), (4), (5) and (10), 1B(4), 1C(3), 2(3) to (5) and 4(1) to (4), for “Council”, in each place it occurs, insert “regulatory committee”,

(b) paragraph 5 of Part 1 (as inserted by section 130(b) of the 2010 Act) is repealed.

(3) In Part 2, in paragraph 5 and the heading of that Part, for “Council”, in each place it occurs, insert “regulatory committee”.

In section 39 of the 2007 Act (monitoring effectiveness of guarantee funds etc.), in paragraph (a) of subsection (1), before “the Council” insert “the regulatory committee of”.

PART 2

REGULATION OF LEGAL BUSINESSES

Regulatory functions

(1) Section 3F of the 1980 Act (meaning of “regulatory functions”) is amended as follows.

(2) In paragraph (a) of subsection (1), for “(including firms of solicitors) and incorporated practices” substitute “and authorised legal businesses”.

Suspension of authorisation

(1) Section 18 of the 1980 Act (suspension of practising certificates) is amended as follows.

(2) In subsection (1A)—

(a) in paragraph (a), for “the incorporated practice” substitute “an authorised legal business”,

(b) in paragraph (b)—

(i) for “an incorporated practice” substitute “an authorised legal business”,

(ii) for “incorporated practice with another incorporated practice” substitute “authorised legal business with another authorised legal business”,

(c) for the closing words substitute—

“its authorisation is deemed to be withdrawn and, where the business is an incorporated practice, its recognition under section 34(1A) is deemed to be revoked.”.

(3) In subsection (3A)—

(a) in paragraph (a), for “incorporated practice” substitute “authorised legal business”,

(b) in paragraph (b), for “incorporated practice” substitute “authorised legal business”.

Consultants

(1) Section 21 of the 1980 Act (consultants to hold practising certificates) is amended as follows.

(2) In subsection (3), after paragraph (b) insert—

- “(c) not being an owner, member or director of another form of authorised legal business, causes or permits their name to be associated with that business,”.

Offence of disqualified solicitors dishonestly seeking employment

- 5 12 (1) Section 28 of the 1980 Act (offence for solicitors who are disqualified to seek employment without informing employer) is amended as follows.
- (2) In the closing words—
- (a) for “a solicitor in connection with that solicitors practice or by an incorporated practice or multi-national practice” substitute “an authorised legal business”, and
- 10 style="padding-left: 40px;">(b) the words “him, or as the case may be,” are repealed.

Rules as to professional practice, conduct and discipline

- 13 (1) Section 34 of the 1980 Act (rules as to professional practice, conduct and discipline) is amended as follows.
- (2) In subsection (1)—
- 15 style="padding-left: 40px;">(a) after “(3)” insert “of this section and section 41 of the Regulation of Legal Services (Scotland) Act 2023”,
- (b) for “incorporated practices” substitute “authorised legal businesses (including incorporated practices)”.
- (3) In subsection (1A), the “and” after paragraph (d) is repealed and after that paragraph
- 20 insert—
- “(da) in the event that a body corporate is no longer recognised as an incorporated practice, require the review or withdrawal of its authorisation to provide legal services as a legal business, and”.
- (4) In subsection (1D), in paragraph (a), for “incorporated practices” substitute “authorised
- 25 legal businesses”.

Rules as to accounts etc.

- 14 (1) Section 35 of the 1980 Act (accounts rules) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a)—
- 30 style="padding-left: 60px;">(i) for “solicitors and incorporated practices” substitute “authorised legal businesses”,
- (ii) for “their practice” substitute “, or in connection with, their provision of legal services”,
- (b) in paragraph, (b) for “solicitors and incorporated practices” substitute “authorised
- 35 legal businesses”,

(c) in paragraph (c)—

(i) for “solicitors and incorporated practices” substitute “authorised legal businesses”,

(ii) for “their practice;” substitute “, or in connection with, their provision of legal services”,

(d) the “and” immediately following paragraph (d) is repealed, and after that paragraph insert—

“(da) as to which solicitor is (or solicitors are) responsible for ensuring compliance with the rules made under this section on behalf of an authorised legal business, and”,

(e) in paragraph (e)—

(i) after “solicitors” insert “or authorised legal businesses”,

(ii) for “a solicitor who” substitute “an authorised legal business which”.

15 (1) Section 36 of the 1980 Act (interest on client’s money) is amended as follows.

15 (2) In subsection (1)—

(a) in the opening words, for “a solicitor or an incorporated practice” substitute “an authorised legal business”,

(b) in paragraph (aa), in the closing words, for “solicitor in his or, as the case may be the incorporated practice” substitute “authorised legal business”,

20 (c) in paragraph (b), for “solicitor’s or, as the case may be, the incorporated practice’s” substitute “authorised legal business’s”.

(3) In subsection (2), for “a solicitor or incorporated practice” substitute “an authorised legal business”.

(4) In subsection (3)—

25 (a) for “a solicitor or incorporated practice” substitute “an authorised legal business”,

(b) for “solicitor or, as the case may be, incorporated practice” substitute “authorised legal business”,

(c) the words “his or, as the case may be,” are repealed.

30 (5) In subsection (4), for “a solicitor and his client or an incorporated practice” substitute “an authorised legal business (or any solicitor acting on its behalf)”.

16 (1) Section 37 of the 1980 Act (accountant’s certificates) is amended as follows.

(2) In subsection (2), for “incorporated practice” substitute “authorised legal business”.

(3) In subsection (3), in paragraph (b), for “a solicitor or his firm or of an incorporated practice” substitute “an authorised legal business”.

35 (4) After subsection (3) insert—

“(3A) The accountant’s certificate rules must include rules providing for a particular solicitor (or solicitors) to be responsible for ensuring compliance with the rules on behalf of an authorised legal business.”.

(5) In subsection (5)—

(a) in paragraph (a)—

(i) for “a solicitor who or incorporated practice” substitute “an authorised legal business”,

(ii) for “the solicitor or his firm or, as the case may be, of the incorporated practice” substitute “the authorised legal business”,

(iii) the words “him or them or as the case may be,” are repealed,

(b) in paragraph (b)—

(i) for “a solicitor or incorporated practice who” substitute “an authorised legal business which”,

(ii) the words “he has not in the course of his practice or, as the case may be,” are repealed.

(6) In subsection (6)—

(a) in paragraph (a), in sub-paragraph (iii), for “solicitors or incorporated practices” substitute “authorised legal businesses”,

(b) in paragraph (b), in the closing words—

(i) the words “a solicitor who satisfies the Council that he or, as the case may be,” are repealed,

(ii) for “incorporated practice” substitute “authorised legal business”.

(7) In subsection (7)—

(a) for “solicitor or incorporated practice” substitute “authorised legal business”,

(b) the words “him, or as the case may be,” are repealed.

(1) Section 37A of the 1980 Act (accounts and anti-money laundering fees) is amended as follows.

(2) In subsection (1), in paragraph (b), for “incorporated practice” substitute “authorised legal business”.

(3) In subsection (5), in paragraph (b)—

(a) for “incorporated practices” substitute “authorised legal businesses”,

(b) after “as” insert “owners, partners,”.

Powers where excessive fees etc. charged

(1) Section 39A of the 1980 Act (powers where excessive fees etc. charged) is amended as follows.

(2) In subsection (1), for “incorporated practice” in each place it occurs substitute “authorised legal business”.

(3) In subsection (2), in paragraph (b)—

(a) for “incorporated practice” in both places it occurs substitute “authorised legal business”,

(b) after “are” insert “owners, partners or”.

(4) In subsection (3), for “incorporated practice” in both places it occurs substitute “authorised legal business”.

5 (5) In subsection (4), in paragraph (a), for “incorporated practice” substitute “authorised legal business”.

(6) In subsection (6), for “incorporated practice” substitute “authorised legal business”.

(7) In subsection (7), for “incorporated practice” substitute “authorised legal business”.

Powers where failure to comply with rules

10 19 (1) Section 40 of the 1980 Act (power where failure to comply with accounts rules etc.) is amended as follows.

(2) In subsection (1)—

(a) for “incorporated practice” in each place it occurs substitute “authorised legal business”,

15 (b) in the second paragraph (b), after “are” insert “owners, partners or, as the case may be,”.

(3) In subsection (2), for “incorporated practice” in both places it occurs substitute “authorised legal business”.

Judicial factors

20 20 (1) Section 41 of the 1980 Act (appointment of judicial factor) is amended as follows.

(2) In the opening words, for “incorporated practice” substitute “authorised legal business”.

(3) In paragraph (a), for “incorporated practice” substitute “authorised legal business”.

(4) In paragraph (c), for “incorporated practice” substitute “authorised legal business”.

(5) In the closing words, for “incorporated practice” in both places it occurs substitute “authorised legal business”.

25 *Distribution of sums in client bank account*

21 (1) Section 42 of the 1980 Act (distribution of sums in client bank account) is amended as follows.

(2) In subsection (1), for “incorporated practice” in both places it occurs substitute “authorised legal business”.

30 (3) In subsection (2)—

(a) in paragraph (b), for “behoof” substitute “the benefit”,

(b) after paragraph (c) insert—

“*(d) the entering by the solicitor into a debt arrangement scheme within the meaning of Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002.*”.

35

- (4) In subsection (2A)—
- (a) in the opening words, for “incorporated practice” substitute “authorised legal business”,
 - (b) before paragraph (a), insert—
 - 5 “(za) the sequestration of its estate,
 - (zb) the granting by it of a trust deed for the benefit of creditors,
 - (zc) the entering by it into a debt arrangement scheme within the meaning of Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002,”,
 - 10 (c) in paragraph (b), for “incorporated practice” substitute “authorised legal business”.
- (5) In subsection (3), for “incorporated practice” in each place it occurs substitute “authorised legal business”.

Powers to examine documents etc.

22 (1) Section 42C of the 1980 Act (powers to examine documents and demand explanations
 15 in connection with complaints) is amended.

- (2) In subsection (1)—
- (a) in paragraph (b)—
 - (i) for “incorporated practice” substitute “authorised legal business”,
 - (ii) for “practice” where it second occurs substitute “business”,
 - 20 (b) in the closing words, for “incorporated practice” substitute “authorised legal business”.
- (3) In subsection (2)—
- (a) in paragraph (a), for “incorporated practice” substitute “authorised legal business”,
 - (b) in paragraph (b), for “incorporated practice” substitute “authorised legal business”.
- 25 (4) In subsection (3)—
- (a) in paragraph (a), for “incorporated practice” substitute “authorised legal business”,
 - (b) in paragraph (b)—
 - (i) for “incorporated practice” substitute “authorised legal business”,
 - (ii) for “practice” where it second occurs, substitute “business”.

30 *Guarantee Fund*

23 (1) Section 43 of the 1980 Act (Guarantee Fund) is amended as follows.

- (2) In subsection (2)(b)—
- (a) in paragraph (b)—
 - 35 (i) for “incorporated practice or any” substitute “authorised legal business or any owner, partner”,

- (ii) for “incorporated practice” where it second occurs substitute “authorised legal business”,
- (b) in paragraph (c), the words “(with the same meaning as for Part 2 of the 2010 Act)” are repealed.
- 5 (3) In subsection (3)—
- (a) in paragraph (cc)—
- (i) for “incorporated practice or any” substitute “authorised legal business or any owner, partner”,
- 10 (ii) for the words from “director” where it second occurs to the end of the paragraph substitute “owner, partner, director, member, manager, secretary or other employee of the authorised legal business in connection with the business”,
- (b) in paragraph (g)—
- (i) after “any” where it second occurs insert “owner, partner”,
- 15 (ii) for “incorporated practice” substitute “authorised legal business”,
- (iii) for “incorporated practice’s” substitute “authorised legal business’s”.
- (4) In subsection (7), in paragraph (c), for “incorporated practice” substitute “authorised legal business”.
- 24 (1) Part 1 of schedule 3 of the 1980 Act (the Scottish Solicitors Guarantee Fund) is amended as follows.
- 20 (2) In paragraph 1—
- (a) in sub-paragraph (2A), for paragraph (a) substitute—
- “*(aa)* owners, partners, directors or members of authorised legal businesses, or”,
- 25 (b) in sub-paragraph (2B), in paragraph (a), for the words from the beginning to “34(1A)” substitute “by every authorised legal business in respect of each year during which, or part of which, it is authorised to provide legal services by the Society”,
- (c) in sub-paragraph (3A)—
- 30 (i) in paragraph (a)(i)—
- (A) for “incorporated practices” substitute “authorised legal businesses”,
- (B) after “as” insert “owners, partners”,
- (ii) in paragraph (b), for “incorporated practices” substitute “authorised legal businesses”,
- 35 (d) in sub-paragraph (4), for “incorporated practice” substitute “authorised legal business”,
- (e) in sub-paragraph (5), for “incorporated practice” substitute “authorised legal business”,

(f) in sub-paragraph (8), for “incorporated practice” substitute “authorised legal business”.

(3) In paragraph 3, in sub-paragraph (2)—

(a) for “incorporated practices” substitute “authorised legal businesses”,

(b) for “incorporated practice or practices” substitute “authorised legal business or businesses”.

(4) In paragraph 4, in sub-paragraph (2), for “incorporated practice” substitute “authorised legal business”.

25 (1) Part 2 of schedule 3 of the 1980 Act (powers of Council to investigate) is amended as follows.

(2) In paragraph 5, sub-paragraph (2), for “incorporated practice” substitute “authorised legal business”.

Professional indemnity

26 (1) Section 44 of the 1980 Act (professional indemnity) is amended as follows.

(2) In subsection (1), for “incorporated practices” in both places it occurs substitute “authorised legal businesses”.

(3) In subsection (3)—

(a) in paragraph (b), for “incorporated practices or any class of incorporated practices” substitute “authorised legal businesses or any type of authorised legal business”,

(b) in paragraph (c), for “incorporated practices or any class of incorporated practices” substitute “authorised legal businesses or any type of authorised legal business”,

(c) in paragraph (f), for “incorporated practice” substitute “authorised legal business”,

(d) in paragraph (g), for “incorporated practices” substitute “authorised legal businesses”.

(4) In subsection (5), in the definition of “professional liability”, for “incorporated practices” substitute “authorised legal businesses”.

Safeguarding interests of clients

27 (1) Section 45 of the 1980 Act (safeguarding interests of clients of solicitor struck off or suspended) is amended as follows.

(2) In subsection (1), for the words from “the practice” to “revoked” substitute “an authorised legal business whose authorisation to provide legal services is suspended or withdrawn”.

(3) Subsection (2) is repealed.

(4) In subsection (2A), in the opening words—

(a) for “In the case of an incorporated practice, it” substitute “An authorised legal business”,

(b) for “incorporated practice” substitute “authorised legal business”.

(5) In subsection (3A)—

(a) in the opening words, for “solicitor or, as the case may be, incorporated practice” substitute “authorised legal business”,

(b) in paragraph (c), for “solicitor or his firm or, as the case may be, the incorporated practice” substitute “authorised legal business or any solicitor involved with the business”.

(6) In subsection (3B)—

(a) in paragraph (a), for “solicitor or his firm or, as the case may be, the incorporated practice” substitute “authorised legal business”,

(b) in paragraph (b)—

(i) for “the solicitor” substitute “a solicitor of the business”,

(ii) for “his partners” substitute “the solicitor’s partners”,

(iii) for “incorporated practice” substitute “business”,

(iv) for “the practice” substitute “the business”.

(7) In subsection (4)—

(a) for the words from “solicitor” where it first occurs to “was”, substitute “authorised legal business, immediately before the suspension or withdrawal of its authorisation, consisted of”,

(b) for “his firm” substitute “the business”.

(8) In subsection (4A), in the closing words, for “firm” substitute “authorised legal business”.

(9) In subsection (5), in paragraph (a) of the definition of “material date”—

(a) for “solicitor” substitute “principal of an authorised legal business”,

(b) for “recognition under section 34(1A) is revoked.” substitute “authorisation to provide legal services is suspended or withdrawn”.

Restrictions on employing a struck off or suspended solicitor

(1) Section 47 of the 1980 Act (restriction on employing solicitor struck off or suspended) is amended as follows.

(2) For subsection (1) substitute—

“(1) A solicitor or, as the case may be, authorised legal business must not, without the prior written permission of the Council, employ or remunerate a person (“A”) in connection with the solicitor’s practice as such or the authorised legal business’s authorised provision of legal services at a time when A is disqualified from practising as a solicitor by reason of A being struck off the roll or suspended from practice as a solicitor.”

(3) In subsection (3), for “incorporated practice” substitute “authorised legal business”.

(4) In subsection (4), for “incorporated practice so acts its recognition under section 34(1A) shall be revoked” substitute “authorised legal business so acts its authorisation to provide legal services is to be withdrawn”.

Complaints

29 (1) Section 51 of the 1980 Act (complaints to Tribunal) is amended as follows.

(2) In subsection (2), for “incorporated practice” substitute “authorised legal business”.

(3) In subsection (4), after “solicitor” where it third occurs insert “or authorised legal business”.

30 (1) Section 52 of the 1980 Act (procedure on complaints and appeals to Tribunal) is amended as follows.

(2) In subsection (1), for “incorporated practice” substitute “authorised legal business”.

31 (1) Section 53 of the 1980 Act (powers of Tribunal) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (c) substitute—

“(c) an authorised legal business has been convicted by a court of an offence, which conviction the Tribunal is satisfied renders it unsuitable to continue—

(i) in a case where the business is an incorporated practice, to be recognised under section 34(1A), or

(ii) in any case, to be authorised to provide legal services, or”,

(b) in paragraph (d), for “incorporated practice” substitute “authorised legal business”.

(3) In subsection (2)—

(a) in paragraph (c), for “incorporated practice” substitute “authorised legal business”,

(b) in paragraph (d), for “incorporated practice” substitute “authorised legal business”,

(c) the “or” immediately after paragraph (f) is repealed,

(d) after paragraph (f), insert—

“(fa) order that the authorisation of a legal business to provide legal services be withdrawn.”.

(4) In subsection (3A), in paragraph (b)—

(a) for “incorporated practice” where it first occurs substitute “authorised legal business”,

(b) after “34(1A)” insert “or had its authorisation to provide legal services withdrawn”.

(5) After subsection (5), insert—

“(5A) Where the Tribunal have exercised the power conferred by subsection (2) to censure, or impose a fine on, an authorised legal business, or to both censure and impose a fine—

(a) the Tribunal may order that the business’s authorisation is to be subject to such conditions as the Tribunal may direct, and

(b) the Council must give effect to such an order.”.

(6) After subsection (6A), insert—

“(6AA) Where the Tribunal order that the authorisation of a legal business to provide legal services be withdrawn, the Tribunal must direct that the order is to take effect on such date as the Tribunal specifies, being a date not earlier than 60 days after its order is intimated to the authorised legal business, and such an order is to take effect accordingly.”.

(7) In subsection (7), after “(6A)” in both places it occurs insert “, (6AA)”.

32 (1) Section 54 of the 1980 Act (appeals from decisions of Tribunal) is amended as follows.

(2) In subsection (1A), for “incorporated practice” substitute “authorised legal business”.

(3) In subsection (1B), in paragraph (b), for “incorporated practice” substitute “authorised legal business”.

(4) In subsection (2), after paragraph (b) insert—

“(ba) the Tribunal has ordered that the authorisation of a legal business to provide legal services be withdrawn, the authorised legal business may within 21 days of the date when the order is intimated to it apply to the court for an order varying (subject to the limit of 60 days referred to in subsection (6AA) of section 53) the direction under that subsection.”.

33 (1) Part 2 of schedule 4 of the 1980 Act (procedure and powers of Tribunal) is amended as follows.

(2) In paragraph 9, for “incorporated practice” in each place it occurs substitute “authorised legal business”.

(3) In paragraph 10, for “incorporated practice” substitute “authorised legal business”.

(4) In paragraph 16—

(a) in paragraph (c), for “incorporated practice” substitute “authorised legal business”,

(b) in paragraph (d), for “incorporated practice” substitute “authorised legal business”,

(c) after paragraph (e), insert—

“(ea) ordering that the authorisation of a legal business to provide legal services be withdrawn, or”,

(d) in the closing words—

(i) after “53(6A)” insert “or (6AA)”,

(ii) after “practice” insert “or, as the case may be, to the withdrawal of the authorisation of a legal business to provide legal services.”.

(5) In paragraph 23, in paragraph (cb)(ii), for “, the firm of solicitors or, as the case may be, the incorporated practice” substitute “or the authorised legal business”.

(6) In paragraph 25, for “, the firm of solicitors or, as the case may be, the incorporated practice,” substitute “or the authorised legal business,”.

Protection of banks

34 (1) Section 61 of the 1980 Act (protection of banks) is amended as follows.

- (2) In subsection (1), for “incorporated practice” substitute “authorised legal business”.
- (3) In subsection (2), for “incorporated practice” substitute “authorised legal business”.
- (4) In subsection (3), for “incorporated practice” in both places it occurs substitute “authorised legal business”.

5 Recovery of Council’s expenses

35 (1) Section 62A of the 1980 Act (Council’s power to recover expenses incurred under section 45 or 46) is amended as follows.

- (2) In subsection (1), for “incorporated practice” substitute “authorised legal business”.

Service of notices

10 36 (1) Section 64 of the 1980 Act (service of notices etc.) is amended as follows.

- (2) For “incorporated practice” substitute “authorised legal business”.

Interpretation

37 (1) Section 65 of the 1980 Act (interpretation) is amended as follows.

- (2) In subsection (1), after the definition of “anti-money laundering fee” insert—

15 ““authorised legal business” is a legal business within the meaning of section 39 of the Regulation of Legal Services (Scotland) Act 2023 that is authorised to provide legal services by the Society (in its capacity as a category 1 regulator) in accordance with its authorisation rules made in pursuance of section 42 of that Act (and “authorised”, in relation to
 20 a legal business, is to be construed accordingly).”.

Revenue powers in respect of authorised legal businesses

38 (1) Schedule 1 of the 1980 Act (the Law Society of Scotland) is amended as follows.

- (2) In paragraph 6, for “paragraph” substitute “paragraphs 6B(2) and”.
- (3) After paragraph 6A, insert—

25 “6B(1) The Society may, in accordance with its authorisation rules made in pursuance of section 42(1)(d) of the Regulation of Legal Services (Scotland) Act 2023 charge an annual fee in relation to the authorisation of legal businesses (and may charge different fees based on such criteria (such as the size or financial performance of the business) as the rules may specify).

30 (2) For the purposes of paragraph 6, the Society in general meeting—
 (a) is to take into account the amount of any annual authorisation fee payable under sub-paragraph (1) when fixing subscriptions under paragraph 6, and

35 (b) in so doing, may elect to fix a subscription of £0 for members (or categories of member) if it considers the annual authorisation fees payable under sub-paragraph (1) sufficient.”.

(4) In paragraph 7A—

(a) the words from “a” to the end become paragraph (a) and after that paragraph insert “, or

(b) a special charge on all authorised legal businesses of such amount and payable at such time and for such specified purpose as it may determine.”.

(5) In paragraph 7B, after “member” in both places it occurs insert “or type of authorised legal business”.

(6) In paragraph 8, after “subscriptions” insert “, annual authorisation fees”.

SCHEDULE 2

Introduced by section 20(3)

FURTHER PROVISION ABOUT MEASURES OPEN TO THE SCOTTISH MINISTERS

PART 1

PERFORMANCE TARGETS

Application

1 This Part applies where the Scottish Ministers—

(a) are satisfied that an act or omission of a category 1 or category 2 regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, or

(b) consider that, for any other reason, it is necessary or expedient for one or more performance targets to be set as respects a category 1 or category 2 regulator.

Power to set targets

2 (1) The Scottish Ministers may—

(a) set one or more performance targets for the regulator in relation to its regulatory functions,

(b) require the regulator to set one or more performance targets in relation to its regulatory functions.

(2) The regulator must (so far as practicable) comply with a performance target set for it under sub-paragraph (1)(a) or (b).

Decision

3 Where the Scottish Ministers decide to proceed with a measure under this Part—

(a) the decision notice required under paragraph 30(2) must contain any target set or any requirement made by the Scottish Ministers to set a target, and

- (b) the regulator must publish any target set by it following a requirement under paragraph 2(1)(b) in such manner as it considers most appropriate for bringing it to the attention of any relevant person or body.

PART 2

DIRECTIONS

Application

4 This Part applies where the Scottish Ministers are satisfied that—

- (a) an act or omission of a category 1 or category 2 regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives,
- (b) a category 1 or category 2 regulator has failed to comply with a requirement imposed on it by or under this Act (including a direction given in accordance with this Part), or
- (c) a category 1 or category 2 regulator has failed to adhere to its internal governance arrangements (including, in particular, those relating to the independent and effective exercise of its regulatory functions).

Power to direct

5 (1) The Scottish Ministers may direct the regulator to take—

- (a) in a case falling within paragraph 4(a), such action as they consider will counter the adverse impact, mitigate its effect or prevent its recurrence,
- (b) in a case falling within paragraph 4(b) or (c), such action as they consider will remedy the failure, mitigate its effect or prevent its recurrence.

(2) A direction under sub-paragraph (1) must not be framed by reference to—

- (a) a specific disciplinary case, or
- (b) other specific regulatory proceedings.

(3) A direction under sub-paragraph (1) may require the regulator to refrain from doing something.

(4) The regulator must (so far as practicable) comply with a direction given to it in accordance with this Part.

Decision

6 Where the Scottish Ministers decide to proceed with a measure under this Part, the decision notice required under paragraph 30(2) must contain the direction.

Extension of time to comply

7 (1) The Scottish Ministers may, on an application by a category 1 or category 2 regulator made at any time after the giving of a direction, allow the regulator additional time to comply with the direction.

- (2) Where such additional time is allowed, the Scottish Ministers must publicise that fact in such manner as they consider most likely to bring it to the attention of any relevant person or body.

Enforcement

- 5 8 (1) If at any time it appears to the Scottish Ministers that a category 1 or category 2 regulator has failed to comply with a direction given under this Part, they may make an application to the Court of Session for an order as described in sub-paragraph (2).
- 10 (2) On an application under sub-paragraph (1), the Court may (if it decides that the regulator has failed to comply with the direction) order the regulator to take such steps as the Court considers appropriate to secure compliance with the direction.

PART 3

CENSURE

Application

- 9 This Part applies where the Scottish Ministers are satisfied that—
- 15 (a) an act or omission of a category 1 or category 2 regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, or
- (b) a category 1 or category 2 regulator has failed to comply with a requirement imposed on it by or under this Act.

Power to censure

- 10 The Scottish Ministers may make and publish a statement censuring the regulator for—
- (a) the act or omission (or series of acts or omissions), or
- (b) the failure.

Decision

- 25 11 Where the Scottish Ministers decide to proceed with a measure under this Part, the decision notice required under paragraph 30(2) must contain the statement (and the statement need not be published separately).

PART 4

FINANCIAL PENALTIES

Application

- 30 12 This Part applies where the Scottish Ministers are satisfied that a category 1 or category 2 regulator has failed to—
- (a) adhere to its internal governance arrangements (including, in particular, those relating to the independent and effective exercise of its regulatory functions), or

- (b) comply with a direction given in accordance with Part 2.

Power to impose penalty

- 13 (1) The Scottish Ministers may impose on the regulator a penalty, in respect of a failure mentioned in paragraph 1, of an amount not exceeding the specified maximum.
- 5 (2) For the purpose of sub-paragraph (1), the specified maximum is the maximum amount that is specified in regulations made under section 20(6) for the purpose of this paragraph.
- (3) A financial penalty imposed under this paragraph is payable to the Scottish Ministers.

Amount of penalty

- 10 14 (1) When considering the appropriate amount of a penalty to be imposed under paragraph 13, the Scottish Ministers must have regard to—
- (a) the seriousness of the failure,
- (b) the nature of the failure in other respects.
- (2) It is material for the purpose of sub-paragraph (1)—
- (a) whether the failure was deliberate,
- 15 (b) if the failure is attributable to recklessness or negligence, the degree involved.
- (3) The Scottish Ministers may consult such person or body as they consider appropriate when considering—
- (a) whether to impose a penalty,
- (b) the appropriate amount of the penalty.

20 *Decision*

- 15 (1) Where the Scottish Ministers decide to proceed with a measure under this Part, the decision notice required under paragraph 30(2) must—
- (a) state the amount of the penalty (and mention any allowance made for payment by instalments),
- 25 (b) explain why the Scottish Ministers consider that amount to be appropriate,
- (c) specify the date by which the penalty requires to be paid in full.
- (2) The date by which payment must be made must not be within the 3 months beginning with the day on which the decision notice is given to the regulator (but this does not preclude earlier payment at the initiative of the regulator).

30 *Variation of penalty*

- 16 (1) The Scottish Ministers may, on an application from a category 1 or category 2 regulator received within 21 days beginning with the day on which the decision notice is given to the regulator—
- (a) vary the date by which the penalty requires to be paid,

- (b) allow for the penalty to be paid by—
 - (i) instalments (if not already allowed), or
 - (ii) different instalments (if allowed).

5 (2) Where an application is made under sub-paragraph (1), no part of the penalty is required to be paid before the Scottish Ministers notify the regulator of their determination of the application.

Appeal

10 17 (1) A category 1 or category 2 regulator on which a financial penalty is imposed under paragraph 13 may appeal to the Court of Session against the penalty on one or more of the appeal grounds.

- (2) 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.

Appeal grounds

18 The grounds for an appeal under paragraph 17 are—

- (a) that, in the circumstances of the case—
 - (i) it was not appropriate to impose the penalty, or
 - (ii) the amount of the penalty is excessive,
- (b) that the date specified under paragraph 15(1)(c) is unreasonable,
- (c) that the other arrangements for payment are unreasonable, including—
 - (i) the absence of any provision for payment by instalments, or
 - (ii) any provision for payment by instalments that has been allowed,
- (d) that—
 - (i) the penalty was imposed otherwise than in accordance with this schedule, and
 - (ii) the regulator's interests have been substantially prejudiced as a result.

Time for appeal

30 19 (1) An appeal under paragraph 17 is to be made—

- (a) within the period of 3 months beginning with the day on which the decision notice is given to the regulator, or
- (b) where the ground of appeal relates to a decision on an application made under paragraph 16(1), within the period of 3 months beginning with the day on which the regulator is notified of the decision.

- (2) Where an appeal is made under paragraph 17, no part of the penalty requires to be paid before the appeal is determined or withdrawn.

Interest

20 (1) If the whole or part of a penalty is not paid as required in accordance with this Part, the unpaid amount carries interest at the specified rate.

- (2) For the purpose of sub-paragraph (1), the specified rate is the rate that is specified in regulations made under section 20(6) for the purpose of this paragraph.

Default

21 (1) Sub-paragraph (2) applies where the whole or part of a penalty is not paid as required in accordance with this Part.

- (2) The Scottish Ministers may recover from the regulator, as a debt due to them—
- (a) the penalty or (as the case may be) the part of it, and
 - (b) the interest that it carries.

PART 5

MAKING CHANGES TO REGULATORY FUNCTIONS

Application

22 This Part applies when the Scottish Ministers are satisfied that—

- (a) an act or omission of a category 1 or category 2 regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, and
- (b) the matter cannot be addressed adequately by the Scottish Ministers taking any of the measures mentioned in section 20(4)(a) to (d).

Power to make changes

23 (1) The Scottish Ministers may—

- (a) in a case where the regulator falls within sub-paragraph (2), direct the regulator to change its scheme in such manner and by such date as the Scottish Ministers may specify (which may include removing types of legal services that its members may provide),
- (b) in any other case, by regulations make provision to change or remove some or all of the regulatory functions of the regulator.

(2) A regulator falls within this paragraph if it is an accredited regulator or if it acquired rights for its members to provide legal services (other than rights to conduct litigation and rights of audience) by virtue of an application under section 25 of the 1990 Act.

(3) Regulations under this paragraph may amend an enactment.

- (4) For the purpose of sub-paragraph (1)(a), the regulator's scheme is the scheme that was approved under section 26(6) of the 1990 Act or, as the case may be, section 29 of this Act (as such scheme may be amended from time to time).

24 Regulations under this Part may include provision relating to the transfer of the regulation
5 of legal services providers regulated by the regulator to another regulator.

Decision

25 (1) Where the Scottish Ministers decide to proceed with a measure under this Part, the
decision notice required under paragraph 30(2) must—

- 10 (a) state the changes that they intend to make to the regulatory functions of the
regulator or, as the case may be, the regulatory functions that they intend to remove
from the regulator, and
(b) explain why the Scottish Ministers consider the changes to be appropriate.

(2) The date by which regulations may be made must not be within the period of 3 months
beginning with the day on which the decision notice is given to the regulator.

15 *Parliamentary procedure for regulations*

26 (1) The Scottish Ministers may not make regulations under paragraph 23(1)(b) unless—

- (a) they have given the regulator a decision notice as required under paragraph 30(2),
(b) they have provided draft regulations to the persons consulted on the notice of
intention under paragraph 29 and consulted them in relation to such regulations
20 (which consultation must provide at least 21 days for the consultees to respond),
(c) they have laid before the Scottish Parliament—
(i) the draft regulations, and
(ii) an explanatory document, and
(d) the draft regulations have been approved by resolution of the Parliament.

25 (2) The explanatory document must give details of—

- (a) any representations received as a result of the consultation under paragraph 29,
(b) any representation received as a result of the consultation on the draft regulations,
(c) the changes (if any) made to the proposed measure or regulations as a result of
those representations.

30 **PART 6**

PROCEDURE FOR IMPOSING A MEASURE

Application

27 This Part applies to the Scottish Ministers taking any measure mentioned in section
20(4) against a category 1 or category 2 regulator.

Notice of intention

28 (1) Before taking a measure against the regulator, the Scottish Ministers must give it a notice (a “notice of intention”) of their intention to do so.

5 (2) The notice of intention must set out the details of the proposed measure and, in particular, must—

- (a) state the type of measure (or measures) that the Scottish Ministers intend to take,
- (b) set out the details of what the Scottish Ministers propose under the measure,
- (c) explain why they are satisfied that it is appropriate to take the measure.

Consultation

10 29 (1) The regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed measure.

(2) The Scottish Ministers must—

15 (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,

(b) give a copy of the notice of intention to—

- (i) the Lord President,
- (ii) such other person or body as they consider appropriate,

(c) after the expiry of the period for representations—

20 (i) give the recipients under paragraph (b) a copy of any representations received from the regulator,

(ii) consult them accordingly in relation to the proposed amendments (which consultation must provide at least 21 days for the consultees to respond).

(3) When consulted under sub-paragraph (2)(c), the Lord President is to—

25 (a) give the Scottish Ministers such advice in respect of the proposed measure as the Lord President considers appropriate,

(b) in deciding what advice to give, have regard (in particular) to the likely impact of the proposed measure on the operation of the Scottish courts.

(4) For the purpose of sub-paragraph (3)—

30 (a) the regulator, or

(b) any other person who holds information relevant in relation to proposed amendments,

must provide the Lord President with such information about the proposed measure (or its likely consequences) as the Lord President may reasonably require.

Decision

30 (1) The Scottish Ministers must have regard to any representations made to them by the regulator, or any consultee under paragraph 29(2)(c), when deciding whether to proceed with the proposed measure.

5 (2) The Scottish Ministers must—

- (a) give a notice of their decision (a “decision notice”) to the regulator,
- (b) notify the consultees under paragraph 29(2)(c) of their decision,
- (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.

10 (3) The decision notice must—

- (a) explain the Scottish Ministers’ reasons for proceeding with the measure,
- (b) set out the details of the action they are taking under the measure as required by the relevant Part of this schedule, and
- (c) if appropriate, specify the date from which the measure will take effect (which may be the date on which that notice is given).

Meaning of relevant persons or bodies

31 For the purposes of this Part, relevant persons or bodies include—

- (a) other category 1 and category 2 regulators,
- (b) legal services providers,
- (c) organisations representing the interests of consumers,
- (d) members of the public.

SCHEDULE 3
(introduced by section 87)

MINOR AND CONSEQUENTIAL MODIFICATIONS OF ENACTMENTS

PART 1

REGULATORY FRAMEWORK

Regulatory objectives and professional principles

1 (1) The 2007 Act is amended as follows.

(2) In section 57G (interpretation of Part 2A)—

- (a) the existing words from ““approved” to the end become paragraph (a),
- (b) in that paragraph, the words from ““professional” to “objectives”” are repealed,
- (c) after that paragraph, insert—

““(b) “professional principles” means the principles described in section 4(1) of the 2023 Act,

(c) “regulatory objectives” are the objectives described in section 2 of the 2023 Act (construed in accordance with section 3 of that Act).”.

- 2 (1) The 2010 Act is amended as follows.
- (2) Section 1 (regulatory objectives) is repealed.
- 5 (3) Section 2 (professional principles) is repealed.
- (4) The title of Part 1 becomes “MEANING OF LEGAL SERVICES AND ROLE OF MINISTERS”.
- (5) In section 4 (ministerial oversight), in subsection (2)(a), after “objectives” insert “(see section 149(2))”.
- 10 (6) In section 77 (role of approved regulators)—
- (a) subsections (1) to (3) are repealed,
- (b) in subsection (4), for “The approved regulator must” substitute “An approved regulator must, in relation to the exercise of its functions under this Part.”.
- (7) Section 119 (application by the profession) is repealed.
- 15 (8) In section 149 (definitions), in subsection (2), after paragraph (c) insert—
- “(d) “professional principles” means the principles described in section 4(1) of the Regulation of Legal Services (Scotland) Act 2023,
- (e) “regulatory objectives” are the objectives described in section 2 of the Regulation of Legal Services (Scotland) Act 2023 (construed in accordance with section 3 of that Act).”.
- 20 (9) In schedule 9 (index of expressions used), in respect of the entries for “regulatory objectives”, “professional principles” and “legal services” substitute—
- | | |
|-------------------------|---------------------|
| “legal services | section 3 |
| professional principles | section 149(2)(d) |
| regulatory objectives | section 149(2)(e)”. |
- 25

New regulators

- 3 (1) The 1980 Act is amended as follows.
- (2) In section 32 (offence for unqualified persons to prepare certain documents), in subsection (2), for paragraph (f) substitute—
- 30 (f) to a person exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the 1990 Act).”
- (3) In Part 1 of schedule 4 (constitution, procedure and powers of the Tribunal), in paragraph 1A, in paragraph (b), for sub-paragraph (iv) substitute—
- 35 (iv) persons exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the 1990 Act).”.

4 (1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) In section 12A (register of advice organisations), in subsection (2), for paragraph (d) substitute—

5 “(d) has a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990),”.

5 (1) The 2010 Act is amended as follows.

(2) In section 48 (eligibility criteria), in subsection (5), for paragraph (c) substitute—

10 “(c) authorised legal services provider,”.

(3) In section 72(1) (employing disqualified lawyer), in paragraph(c)(iii), for “a litigation practitioner” substitute “an authorised legal services provider”.

(4) In section 73(1) (concealing disqualification), in paragraph (c)(iii), for “a litigation practitioner” substitute “an authorised legal services provider”.

15 (5) In section 119 (application by the profession), in subsection (4), for paragraph (d) substitute—

“(d) authorised legal services providers,”.

(6) In section 149 (definitions), in subsection (2), for paragraph (c) substitute—

20 “(c) a reference to an authorised legal services provider is to a person having a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the 1990 Act).”.

(7) In schedule 9 (index of expressions used), in the entry relating to “litigation practitioner”, in the first column, for “litigation practitioner” substitute “authorised legal services provider”.

6 (1) The Courts Reform (Scotland) Act 2014 is amended as follows.

(2) In section 95 (key defined terms), in subsection (4), for paragraph (c) substitute—

30 “(c) a person having a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990).”.

(3) In section 103 (power to regulate procedure etc. in the Court of Session), in subsection (2), in paragraph (m), for sub-paragraph (ii) substitute—

35 “(ii) do not have a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990),”.

(4) In section 104 (power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court), in subsection (2), in paragraph (m), for sub-paragraph (ii) substitute—

“(ii) do not have a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990),”.

- 5 7 (1) The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is amended as follows.
- (2) In section 36 (power to regulate procedure etc.), in subsection (2), in paragraph (e), for sub-paragraph (ii) substitute—

10 “(ii) do not have the right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the Regulation of Legal Services (Scotland) Act 2023 (or section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990),”.

PART 2

RENAMING SCOTTISH LEGAL SERVICES COMMISSION

15 *Solicitors (Scotland) Act 1980*

- 8 In section 65(1) of the Solicitors (Scotland) Act 1980 (interpretation), in the definition of “the Commission”, for “Complaints” substitute “Services”.

Legal Aid (Scotland) Act 1986

- 9 In the Legal Aid (Scotland) Act 1986—
- 20 (a) in section 34(2) (confidentiality of information)—
- (i) in paragraph (aa), for “Complaints” substitute “Services”,
- (ii) in paragraph (b), for “Complaints” substitute “Services”,
- (b) in section 35AA (information about legal services), in subsection (3)(d), for “Complaints” substitute “Services”.

25 *Immigration and Asylum Act 1999*

- 10 In the Immigration and Asylum Act 1999—
- (a) in section 86 (designated professional bodies), in subsection (4)(c), for “Complaints” substitute “Services”,
- (b) in schedule 5 (the Immigration Services Commissioner), in paragraph 4(2)(c), for “Complaints” substitute “Services”.
- 30

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 11 In schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), for the entry relating to the Scottish Legal Complaints Commission substitute “The Scottish Legal Services Commission”.

Freedom of Information (Scotland) Act 2002

12 In schedule 1 of the Freedom of Information (Scotland) Act 2002 (Scottish public authorities), in paragraph 92A, for “Complaints” substitute “Services”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

5 13 In schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the specified authorities), for the entry relating to the Scottish Legal Complaints Commission substitute “Scottish Legal Services Commission”.

Public Services Reform (Scotland) Act 2010

14 In the Public Services Reform (Scotland) Act 2010—
10 (a) in schedule 5 (improvement of public bodies: listed bodies), for the entry relating to the Scottish Legal Complaints Commission substitute “Scottish Legal Services Commission”,
(b) in schedule 8 (information on exercise of public functions: listed public bodies), for the entry relating to the Scottish Legal Complaints Commission substitute
15 “Scottish Legal Services Commission”.

Legal Services (Scotland) Act 2010

15 In the 2010 Act—
(a) in section 28 (communicating outside), in subsection (1)(d), for “Complaints” substitute “Services”,
20 (b) in section 31 (assessment of licensed providers), in subsection 2, for “Complaints” substitute “Services”,
(c) in section 79 (complaints about regulators), in subsection (1), for “Complaints” substitute “Services”,
25 (d) in section 80 (levy payable by regulators), in subsection (1), for “Complaints” substitute “Services”.

Public Records (Scotland) Act 2011

16 In schedule 1 of the Public Records (Scotland) Act 2011 (authorities to which Part 1 applies), for the entry relating to the Scottish Legal Complaints Commission substitute “Scottish Legal Services Commission”.

30 *Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012*

17 In regulation 3(1) of the Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012 (S.S.I. 2012/153) (notification to the Scottish Ministers), for “Complaints” substitute “Services”.

Procurement Reform (Scotland) Act 2014

- 18 In schedule 1 of the Procurement Reform (Scotland) Act 2014 (contracting authorities), in paragraph 56, for “Complaints” substitute “Services”.

Letting Agent Code of Practice (Scotland) Regulations 2016

- 5 19 In schedule 1 of the Letting Agent Code of Practice (Scotland) Regulations 2016 (S.S.I. 2016/133) (letting agent code of practice), in paragraph 113, for “Scottish Legal Complaints Commission” substitute “Scottish Legal Services Commission”.

Gender Representation on Public Boards (Scotland) Act 2018

- 10 20 In schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018 (public authorities), for the entry relating to the Scottish Legal Complaints Commission substitute—

“Scottish Legal Services Commission”.

Licensed Legal Services (Complaints About Approved Regulators) (Scotland) Regulations 2018

- 15 21 In regulation 1(2) of the Licensed Legal Services (Complaints About Approved Regulators) (Scotland) Regulations (S.S.I. 2018/341) (citation, commencement and interpretation), in the definition of “the Commission”, for “Complaints” substitute “Services”.

Scottish Parliament (Disqualification) Order 2020

- 20 22 In the Scottish Parliament (Disqualification) Order 2020 (S.S.I. 2020/321), in schedule 1, for the entry relating to members of the Scottish Legal Complaints Commission substitute “Any member of the Scottish Legal Services Commission.”.

PART 3

OTHER AMENDMENTS RELATING TO THE SCOTTISH LEGAL SERVICES COMMISSION

Solicitors (Scotland) Act 1980

- 25 23 (1) The 1980 Act is amended as follows.
- (2) In section 3A (discharge of functions of Council of the Law Society), in subsection (5), in paragraph (aa), the words “or 15(5)(a)” are repealed.
- (3) In section 15 (discretion of Council in special cases), in subsection (2), in paragraph (i)(i), the words “or 15(5)(a)” are repealed.
- 30 (4) In section 34 (rules as to professional practice, conduct and discipline), after subsection (1D) insert—
- “(1E) Before making any rules under this section which relate to complaints against solicitors or authorised legal businesses, the Council must consult the Commission.”.

- (5) In section 39A (powers where excessive fees etc. charged), in subsection (10), paragraph (b), the words “or 15(5)(a)” are repealed.
- (6) In section 40 (power where failure to comply with accounts rules etc.), in subsection (5), in paragraph (b), the words “or 15(5)(a)” are repealed.
- 5 (7) In section 42ZA (unsatisfactory professional conduct: Council’s powers), in subsection (1), the words “or 15(5)(a)” are repealed.

Legal Aid (Scotland) Act 1986

- 24 In section 34 of the Legal Aid (Scotland) Act 1986 (confidentiality of information), in subsection (2)(b), the words “or 15(5)(a)” are repealed.

10 Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

- 25 (1) The 1990 Act is amended as follows.
- (2) In section 20 (professional misconduct etc.), in subsection (1), in the opening words, the words “or 15(5)(a)” are repealed.
- 15 (3) In section 20ZB (unsatisfactory professional conduct), in subsection (1), the words “or 15(5)(a)” are repealed.
- (4) In section 25 (rights to conduct litigation and rights of audience), in subsection (2), in paragraph (c)(ii), the words “or 15(5)(a)” are repealed.

Legal Profession and Legal Aid (Scotland) Act 2007

- 26 (1) The 2007 Act is amended as follows.
- 20 (2) In section 2 (receipt of complaints: preliminary steps)—
- (a) in subsection (1)(a)(i), for “other than a firm of solicitors or an incorporated practice” substitute “who is an individual”,
- (b) in subsection (3), for the words from “the”, where it first occurs, to “further” substitute “any”.
- 25 (3) In section 9 (services complaint: Commission’s duty to investigate and determine)—
- (a) in subsection (1)—
- (i) in paragraph (d), the words “under section 2(1A)(a)” are repealed,
- (ii) in paragraph (d), at the end insert “(in whole or in part)”,
- 30 (iii) in the closing words, the words “, subject to section 15(2) and (5)” are repealed,
- (iv) in the closing words, after “complaint” insert “(or the part of the complaint constituting a services complaint)”,
- (b) subsection (1B) is repealed,
- (c) in paragraph (d), the words “under section 2(1A)(a)” are repealed,
- 35 (d) in the closing words, the words “, subject to section 15(2) and (5)” are repealed.

- (4) In section 16 (power to monitor compliance with directions under section 10(2)), in subsection (2)—
- (a) for “an appeal” substitute “a review”,
 - (b) for “section 21(1)” substitute “section 20A”,
 - (c) for “the appeal” substitute “the review”.
- (5) In section 17 (power to examine documents and demand explanations in connection with conduct or services complaints)—
- (a) in subsection (1)—
 - (i) the words “, 15” are repealed,
 - (ii) after “16” insert “or any provision in rules made under section 32(1) (but only in so far as the provision in the rules relates to the categorisation of complaints)”,
 - (b) in subsection (4), for “, 10 or 15” substitute “or 10 or any provision in rules made under section 32(1)”.
- (6) In section 23 (handling by relevant professional organisations of conduct complaints: investigation by Commission), in subsection (5), in paragraph (a), the words “the handling complaint is that” are repealed.
- (7) In section 33 (duty of relevant professional organisations to forward complaints to Commission), in subsection (1)(b), the words “or 15(5)(a)” are repealed.
- (8) In section 34 (Commission’s duty to provide advice)—
- (a) in subsection (1), the words “services complaint or a handling” are repealed,
 - (b) in subsection (2), for “a firm of solicitors or an incorporated practice” substitute “not an individual”.
- (9) In section 37 (obtaining of information from relevant professional organisations), in subsection (2), for “or 15(5)(a)” substitute “(or treated as having been remitted to it under that section by virtue of section 33A(2))”.
- (10) In section 43(2) (restriction upon disclosure of information: Commission)—
- (a) in paragraph (a), after “services complaint” insert “, regulatory complaint”,
 - (b) in paragraph (b)(ii), after “services complaint” insert “, a regulatory complaint”.
- (11) In section 46(1) (interpretation of Part 1)—
- (a) after the definition of “annual general levy” insert—
 - ““authorised legal business” is a legal business (within the meaning of section 39(2) of the 2023 Act) that is authorised to provide legal services by a category 1 regulator,
 - “category 1 regulator” means a body that regulates the provision of legal services and which has been assigned as a category 1 regulator in or under section 8 of the 2023 Act,
 - “category 2 regulator” means a body that regulates the provision of legal services and which has been assigned as or deemed a category 2 regulator in or under section 8 of the 2023 Act,”

(b) in the definition of “employing practitioner” for “section 4(4)(a)” substitute “section 2(1ZB)”,

(c) in the definition of “inadequate professional services”, in paragraph (a), for sub-paragraphs (iii) and (iv) substitute—

5 “(iii) an authorised legal business, legal services which are in any respect not of the quality which could reasonably be expected of a competent authorised legal business,

10 (iv) a person exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act), legal services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right,”

(d) after the definition of “incorporated practice” insert—

15 ““legal services” has the meaning given by section 6 of the 2023 Act,”

(e) in the definition of “practitioner”—

(i) for paragraph (d), substitute—

20 “(d) an authorised legal business, whether or not since that time there has been any change in the persons exercising the management and control of the business, the business has ceased to be authorised to provide legal services by a category 1 regulator or the business has ceased to operate;”

(f) paragraph (e) is repealed,

(g) for paragraph (f) substitute—

25 “(f) a person exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act) and includes any such person, whether or not the person had acquired the right at that time and notwithstanding that subsequent to that time the person no longer has the right,”

(h) after the definition of “practitioner”, insert—

30 ““professional services” includes legal services,”

(i) after the definition of “registered European or foreign lawyer” insert—

““regulatory complaint” (except in the case of section 57B) has the meaning given by section 2(1)(c),”

(j) for the definition of “relevant professional organisation” substitute—

35 ““relevant professional organisation” means, in relation to a complaint as respects a practitioner who is regulated by—

(a) a category 1 regulator, that category 1 regulator,

(b) a category 2 regulator, that category 2 regulator,”

(k) in the definition of “unsatisfactory professional conduct”, in paragraph (c), for “conduct litigation or a right of audience acquired by virtue of section 27 of the

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1990 Act” substitute “provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act)”.

(12) In Part 2, the title of the Part becomes “CONDUCT, SERVICES AND REGULATORY COMPLAINTS ETC.: OTHER MATTERS”.

5 (13) In section 47 (conduct complaints: duty of relevant professional organisations to investigate etc.)—

(a) in subsection (1)—

(i) for “or 15(5)(a)” substitute “(or treated as having been remitted to it under that section by virtue of section 33A(2))”,

10 (ii) for “section 15(1) and (6)” substitute “such rules”,

(b) in subsection (3), for “section 24(6)” substitute “section 24(2)”.

(14) In section 80 (interpretation), after the definition of “the 1990 Act” insert—

““the 2023 Act” means the Regulation of Legal Services (Scotland) Act 2023.”.

15 (15) In schedule 1, paragraph 2 (membership of the Commission), for sub-paragraph (6)(d) substitute—

“(d) persons exercising a right to provide legal services acquired by virtue of Chapter 3 of Part 1 of the 2023 Act (or section 27 of the 1990 Act).”.

Legal Services (Scotland) Act 2010

20 27 In the 2010 Act, in section 121 (professional rules), after subsection (3) insert—

“(3A) Before making any rule which relates to complaints against advocates, the Faculty must consult the Scottish Legal Services Commission.”.

PART 4

GENERAL

25 *Freedom of information*

28 (1) The Freedom of Information (Scotland) Act 2002 is amended as follows.

(2) In Part 7 of schedule 1, after paragraph 61C insert—

30 “61D A body that is assigned as a category 1 regulator in or under section 8 of the Regulation of Legal Services (Scotland) Act 2023, but only in respect of information relating to the exercise of its regulatory functions within the meaning of section 7 of that Act.”.

Removal of special provision for confirmation agents and will writers etc.

29 In the 2007 Act, Part 2B (special provision for confirmation agents and will writers) is repealed.

35 30 (1) The 2010 Act is amended as follows.

- (2) In section 48(5) (eligibility criteria)—
- (a) at the end of paragraph (b), insert “or”,
 - (b) paragraph (d) and the “or” immediately preceding it are repealed.

- (3) In section 72(1)(c) (employing disqualified lawyer)—
- (a) at the end of sub-paragraph (ii) insert “or”,
 - (b) sub-paragraph (iv) and the “or” immediately preceding it are repealed.

- (4) In section 73(1)(c) (concealing disqualification)—
- (a) at the end of sub-paragraph (ii) insert “or”,
 - (b) sub-paragraph (iv) and the “or” immediately preceding it are repealed.

- (5) Part 3 (confirmation and will writing services) is repealed.

- (6) In section 146(3)(a) (regulations)—
- (a) at the end of sub-paragraph (viii) insert “or”,
 - (b) sub-paragraphs (x) to (xiv) are repealed.

- (7) In section 149(4)(b) (definitions), for “Parts 2 and 3” substitute “Part 2”.

- (8) In schedule 9 (index of expressions used), the entries relating to the following definitions (and the preceding heading relating to “Part 3 expressions”) are repealed—

- (a) “approving body (of confirmation agent)”,
- (b) “approving body (of will writer)”,
- (c) “confirmation agent and confirmation services”,
- (d) “regulatory scheme (of approving body)”,
- (e) “will writer and will writing services”.

- 31 In the Enterprise and Regulatory Reform Act 2013, in schedule 6 (regulatory repeals etc: minor and consequential amendments), paragraphs 198 to 200 are repealed.

Disclosure requirements in connection with new offences

- 32 (1) The Police Act 1997 is amended as follows.

- (2) In schedule 8A (offences which must be disclosed unless a sheriff orders otherwise) (inserted by article 3(8) of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 (S.S.I. 2015/423))—

- (a) after paragraph 32B (insolvency), insert—

“Legal professions etc.

32C An offence under the Solicitors (Scotland) Act 1980.

32D An offence under any of the following provisions of the Regulation of Legal Services (Scotland) Act 2023—

- (a) section 32(1) (offence of pretending to have acquired rights),
- (b) section 40(1) (offence of pretending to be an authorised legal business),

- (c) section 82(1) (offence of taking or using the title of lawyer),
- (d) section 83(1) (offence of pretending to be a regulated provider of legal services),
- (e) section 84(1) (offence of pretending to be a member of the Faculty of Advocates).”,

(b) paragraph 44D (solicitors) and the heading immediately preceding it are repealed.

33 (1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50) is amended as follows.

(2) In schedule A1 (offences which must be disclosed subject to exceptions)—

(a) after paragraph 32B (insolvency), insert—

“Legal professions etc.

32C An offence under the Solicitors (Scotland) Act 1980.

32D An offence under any of the following provisions of the Regulation of Legal Services (Scotland) Act 2023—

- (a) section 32(1) (offence of pretending to have acquired rights),
- (b) section 40(1) (offence of pretending to be an authorised legal business),
- (c) section 82(1) (offence of taking or using the title of lawyer),
- (d) section 83(1) (offence of pretending to be a regulated provider of legal services),
- (e) section 84(1) (offence of pretending to be a member of the Faculty of Advocates).”,

(b) paragraph 44D (solicitors) and the heading immediately preceding it are revoked.

Other miscellaneous consequential and minor amendments

34 (1) The 1980 Act is amended as follows.

(2) In section 32 (offence for unqualified persons to prepare certain documents), in subsection (2B), for paragraph (a) substitute—

“(a) a person who is, by virtue of an act of sederunt made under section 104(1) of the Courts Reform (Scotland) Act 2014 (power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court) permitted to represent—

- (i) a party to a simple procedure case,
- (ii) a debtor or hirer in proceedings for—

(A) a time order under section 129 of the Consumer Credit Act 1974 (time orders), or

(B) variation or revocation, under section 130(6) of that Act (variation and revocation of time orders), of a time order made under section 129.”.

(3) In section 44 (professional indemnity), in subsection (5)—

(a) in paragraph (a), for “Part 4” substitute “Part 4A”,

(b) in paragraph (b), for “Part 4” substitute “Part 4A”.

(4) In section 61A (solicitors’ fees), in subsection (1), for paragraphs (a) and (b) substitute—

5 “(a) section 103(2)(j) of the Courts Reform (Scotland) Act 2014, or

(b) section 104(2)(j) of that Act.”.

(5) In section 65 (interpretation)—

(a) after the definition of “building society” insert—

10 ““category 1 regulator” means a body that regulates the provision of legal services and which has been assigned as a category 1 regulator in or under section 8 of the Regulation of Legal Services (Scotland) Act 2023,

15 “category 2 regulator” means a body that regulates the provision of legal services and which has been assigned as or deemed a category 2 regulator in or under section 8 of the Regulation of Legal Services (Scotland) Act 2023,”,

(b) after the definition of “law centre” insert—

““legal services” has the meaning given by section 6 of the Regulation of Legal Services (Scotland) Act 2023.”.

Regulation of Legal Services (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to the regulation of legal services.

Introduced by: Angela Constance
Supported by: Siobhian Brown
On: 20 April 2023
Bill type: Government Bill

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