Regulation of Legal Services (Scotland) Bill - Keeling schedule (v2)

[16 JANUARY 2025]

This document has been prepared as a "Keeling schedule" to set out the changes that would be made to the Bill if the amendments lodged to date by the Scottish Government at Stage 2 were to be agreed. The changes are shown in red and blue. The amendment numbers also appear in square brackets after the changes made by each amendment. The document is provided to assist the lead committee's consideration at Stage 2. It will not reflect any other amendments agreed to by the lead committee at Stage 2 or by the Parliament at Stage 3. Although every effort has been made to ensure the accuracy of the information, it is provided for illustrative purposes only. It should be noted that the provisions in Part 3 and schedules 1 and 3 of the Bill are not included because they make changes to other legislation.

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~~regulating legal services [1] 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),~~

[2]

(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~~Lord President [3] 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 [4] 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 legal services providers [38], and

(v) effective communication between regulators and bodies that represent the interests of consumers, and [39]

(d) for those regulating legal services to—

(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

(1) A regulatory authority must so far as practicable [40] 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.

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

(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.

(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—

(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~~regulatory objectives [41] to do so.

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

(a) the Court of Session,

(b) the Lord President,

(c) the Commission,

(ca) the Scottish Solicitors' Discipline Tribunal, [42]

(d) each category 1 and category 2 regulator, and

(e) each approved regulator of licensed providers.

Professional principles

4 Professional principles

(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,

(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,

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**~~

~~(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.~~

~~(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,~~

~~(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.~~

[43]

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)~~ [44] ~~.~~ or

(d) any activity which involves acting as a third party decision-maker or facilitator in a type of alternative dispute resolution.

[45]

(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~~as appropriate [46] —

(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

(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

(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~~Construction [47] Attorneys are assigned as category 2 regulators.

(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—

(a) reassign a body that is for the time being mentioned in this section to a different regulatory category, but only if the body is—

(i) an accredited regulator, or

(ii) a body which has had an application under section 25 of the 1990 Act granted under section 26 of that Act,

[48]

(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.

(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

(c) the number of legal services providers that the regulator regulates (or is likely to regulate).

(7) Regulations under ~~this section~~subsection (5) [49] are subject to the affirmative procedure.

~~(8) Before making regulations under this section, the Scottish Ministers must consult—~~

~~(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).~~

(8) But the Scottish Ministers may exercise the power to make regulations under subsection (5)(a) only following, and in accordance with, a request to exercise the power received from the Lord President.

(8A) Before making a request referred to in subsection (8), the Lord President—

(a) must consult—

(i) the body whose category the Lord President is proposing to be reassigned,

(ii) the independent advisory panel of the Commission,

(iii) the other category 1 and category 2 regulators, and

(iv) each approved regulator of licensed providers (if not otherwise consulted)., and

(b) may consult—

(i) the Scottish Ministers, and

(ii) such other person or body as the Lord President considers appropriate.

(8B) A request under subsection (8) must include—

(a) a document setting out the reasons for the request, and

(b) copies of any written representations received in response to the consultation under subsection (8).

(8C) As soon as reasonably practicable after making a request under subsection (8), the Lord President must publish the documents included with the request in such manner as the Lord President considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).[50]

(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,

(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

(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,

(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).

(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.

(4) A regulatory committee ~~may~~ [51] —

(a) must (in accordance with this Act or any other enactment) [53] determine its ~~structure~~composition [52] , governance arrangements and priorities,

(b) may [54] 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—~~

~~(a) responsibility for the carrying out of delegated functions, or~~

~~(b) ability to carry out delegated functions.~~

(5) But, an arrangement under subsection (4)(b)—

(a) may not delegate—

(i) the regulatory committee's function of making regulatory rules under this Act or any other enactment,

(ii) to an individual, the committee's function of determining what action it proposes to take in respect of a conduct or regulatory complaint remitted under section 6 or 7A of the 2007 Act or, as the case may be, initiated in accordance with section 33A or 33B of that Act, and

(b) does not affect or limit the regulatory committee's—

(i) responsibility for the exercise of the delegated functions, or

(ii) ability to exercise those functions.

[55]

(5A) A regulatory committee must maintain and publish a document setting out its—

(a) composition, membership and governance arrangements,

(b) regulatory functions (including powers and duties) and procedures,

(c) arrangements (if any) for the delegation of functions.

[56]

(6) A regulatory committee of a category 1 regulator must consult the governing body of the regulator before making ~~changes~~any material change [57] to its ~~structure or~~ [58] governance arrangements.

(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

(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—

(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~~governing body of the regulator or the exercise of the regulator's [59] non-regulatory functions.

(4) A person may not be a member of the regulatory committee if the person—

(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

(d) has been convicted of an offence involving dishonesty.

(4A) The regulatory committee may determine that a person may not be a member of the regulatory committee if the person has been convicted of an offence other than one referred to in subsection (4)(d).

[60]

(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).

(5A) The regulatory committee may co-opt persons who are not members of the regulatory committee (subject to subsections (3)(b) and (4)).

[61]

(5B) The validity of any proceedings of a regulatory committee (or any subcommittee of it) is not affected by a vacancy in membership.

[62]

(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.

(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.

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).

(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—~~ A person may be appointed as a legal member of a regulatory committee only if the person is (any of)— [63]

(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 intrant with a view to becoming an advocate,

(c) a conveyancing or executry practitioner as defined in section 23 of the 1990 Act,

(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,

(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.

(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)).

(c) with the approval of the regulatory committee, arrange for the exercise of any function, other than the function described in section 9(5)(a)(ii), by an individual (which may be a member of staff of the regulator).

[64]

(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.

(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

(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~~ [65] , 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,

(ea) information, in relation to legal services providers that the regulator regulates, about—

(i) the number of conduct complaints remitted (or treated as having been remitted) to it under the 2007 Act, and the number of those complaints that are determined, discontinued or reinstated by it or, where section 9(2) applies, its regulatory committee,

(ii) the number of regulatory complaints remitted (or treated as having been remitted) to it under the 2007 Act, and the number of those complaints that are determined, discontinued or reinstated by it or, where section 9(2) applies, its regulatory committee,

[66]

(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),

(fa) information about directions (if any) given under section 21, including—

(i) the number of directions given in pursuance of each of the purposes in section 21(2),

(ii) a summary of which types of rules are being disapplied or modified (and how frequently they are being disapplied or modified),

(iii) any trends in the kinds of directions that were applied for, rejected or granted,

(iv) the changes in such trends (if any) from the previous report,

[67]

(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~~Lord President [68] ,

(j) except in the case where the regulator is the Law Society, [69] 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.

(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~~
[70]

(b) the independent advisory panel of the Commission.

(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.~~ —

(a) publish its annual report by such electronic means as the regulator (or regulatory committee) considers appropriate, and

(b) send a copy of its annual report to the Lord President,

as soon as practicable after the end of the reporting year to which the annual report relates.
[71]

~~(6) The Scottish Ministers must—~~

~~(a) lay a copy of each annual report they receive before the Scottish Parliament, and~~

~~(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).~~

[72]

(7) In this section~~, "reporting year" means a 12 month period ending on 31 March.~~ —

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

"regulatory complaint" is to be construed in accordance with Part 1 of the 2007 Act,

"reporting year" means, in relation to a category 1 regulator, a 12 month period that coincides with the regulator's financial year.

[73]

14 Compensation funds

(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.

(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,

(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,

(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,

(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.~~

(9) The Scottish Ministers may exercise the power to make regulations under subsection (8) only if they have received a request to exercise the power from—

(a) the Lord President,

(b) the regulatory committee of a category 1 regulator,

(c) a category 1 regulator that has no functions other than regulatory functions, or

(d) the independent advisory panel of the Commission.

(9A) Before making a request under subsection (9), the person making the request ("the requester") must—

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions,

(iii) the independent advisory panel of the Commission, and

(iv) such other person or body as the requester considers appropriate, and

(b) except where the requester is the Lord President, secure the Lord President's agreement to the making of the request.

(9AA) But a body mentioned in subsection (9A)(a)(i) to (iii) does not need to be consulted if the body is the requester.

(9AB) For the purpose of seeking the Lord President's agreement under subsection (9A)(b), the requester must provide to the Lord President—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change, and

(b) copies of any written representations received in response to the consultation under subsection (9A)(a).

(9AC) A request under subsection (9) must include—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (9A)(a), and

(c) except where the requester is the Lord President, written confirmation of the Lord President's agreement to the making of the request.

(9AD) As soon as reasonably practicable after making a request under subsection (9), the requester must publish the documents included with the request in such manner as the

requester considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[74]

(10) Regulations under subsection (8) are subject to the ~~negative~~affirmative [75] 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,

(da) information, in relation to legal services providers that the regulator regulates, about the number of conduct complaints remitted (or treated as having been remitted) to it under the 2007 Act, and the number of those complaints that are determined, discontinued or reinstated by it,

[76]

(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),

(ea) information about directions (if any) given under section 21, including—

(i) the number of directions given in pursuance of each of the purposes in section 21(2),

(ii) a summary of which types of rules are being disapplied or modified (and how frequently they are being disapplied or modified),

(iii) any trends in the kinds of directions that were applied for, rejected or granted,

(iv) any changes in such trends (if any) from the previous report,

[77]

(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~~Lord President [78] ,

(h) except in the case where the regulator is the Faculty of Advocates, [79] 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)).

(2A) When preparing an annual report, a category 2 regulator must consult the independent advisory panel of the Commission.

[80]

(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.~~—

(a) publish its annual report by such electronic means as the regulator considers appropriate, and

(b) send a copy of its annual report to the Lord President,

as soon as practicable after the end of the reporting year to which the annual report relates.

[81]

(4) In this section—

"conduct complaint" is to be construed in accordance with Part 1 of the 2007 Act, [82]

"reporting year" means ~~a yearly period ending on 31 March~~, in relation to a category 2 regulator, a 12 month period that coincides with the regulator's financial year. [83]

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—

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

(i) the name of the individual,

(ii) the ~~current~~ [84] address of the place of business (or primary place of business) of the individual, as most recently notified to the regulator by or on behalf of the legal services provider [85]

(iii) the length of time that the individual has been regulated by the regulator in connection with providing legal services,

(iv) details of any sanction resulting from disciplinary action taken against the individual, for the period of 3 years beginning with the date of its imposition, [86]

(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, as most recently notified to the regulator by or on behalf of the legal services provider [87]

(iii) the length of time that the body has been regulated by the regulator in connection with providing legal services.

(iv) details of any sanction resulting from disciplinary action taken against the body, for the period of 3 years beginning with the date of its imposition. [88]

(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

(b) wishes to continue to appear in the register.

(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.

(4A) During any period where a legal services provider's authorisation to provide legal services is suspended, the entry for that provider must be removed from the register (and, if such suspension is removed, the entry must be restored). [90]

(4B) The register may contain such other information relating to any person or body it regulates as the regulator considers appropriate. [89]

(5) The register must be accessible to, and searchable by, the public, free of charge, by such electronic means as the regulator considers appropriate.

(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),

(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.

(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,

(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—

(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

(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,

(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 (or former legal services provider) [91] in connection with the provision of legal services. or other services (in addition to legal services) that form part of the professional practice of the solicitors or qualifying individuals within the legal business that provides the legal services [92]

Powers of the Scottish Ministers in relation to regulators

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),~~

~~(b) the Competition and Markets Authority, or~~

~~(c) Consumer Scotland.~~

(1) If the condition in subsection (1A) is met, the Lord President may review the performance of a category 1 or category 2 regulator's regulatory functions—

(a) on the Lord President's own initiative, or

(b) if the Lord President is requested to do so by—

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

(ii) the independent advisory panel of the Commission, or

(iii) Consumer Scotland.

(1A) The condition is that the Lord President is concerned that the regulator is failing or is likely to fail—

(a) to exercise its regulatory functions in a manner that is compatible with the regulatory objectives, or

(b) to comply with the requirements imposed on the regulator under this Act or any other enactment.

[93]

(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~~

~~(b) in the public interest.~~subsection (1)(b) by a requesting body only where the requesting body—

(a) is concerned that the regulator may be failing, or may be likely to fail—

(i) to exercise its regulatory functions in a manner that is compatible with the regulatory objectives, or

(ii) to comply with the requirements imposed on the regulator under this Act or any other enactment, and

(b) has—

(i) given notice to the regulator of its reasons for proposing to make the request based on its concerns, and

(ii) given the regulator a reasonable opportunity (which must be no fewer than 28 days from the date of the notice) to respond to the notice and address the requesting body's concerns (or commit to addressing those concerns).

[94]

(2A) A request for a review made under subsection (1)(b)—

(a) must specify each regulatory function or other function of the regulator to which the request relates, and

(b) must be accompanied by—

(i) a copy of the requesting body's notice sent to the regulator under subsection (2), and

(ii) either—

(A) a copy of any written response (or a written summary of any verbal response) by the regulator to the notice given under subsection (2) which the requesting body considers to be insufficient to address its reasons for proposing to make a request for a review, or

(B) written confirmation from the requesting body that the regulator has failed to respond to its notice given under subsection (2) within the required period for a response.

[95]

(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~~ [96] ,

(b) the exercise of its regulatory functions,

(ba) its compliance with the requirements imposed on it under this Act or any other enactment,

[97]

(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).

(4) A category 1 or 2 regulator must—

(a) provide such information about its performance of its regulatory functions as the ~~Scottish Ministers~~Lord President [98] may reasonably request (whether in connection with a review under subsection (1) or a decision as to whether to conduct such a review) [99] , and

(b) do so within the period of ~~21~~28 [100] days beginning with the date of the request (or such longer period as the ~~Scottish Ministers~~Lord President [101] may allow).

(4A) Any person other than a category 1 or category 2 regulator who holds information relating to the performance of a category 1 or category 2 regulator's regulatory functions must—

(a) provide such of that information as the Lord President may reasonably request, and

(b) do so within the period of 28 days beginning with the date of the request (or such longer period as the Lord President may allow).

[102]

(4B) In conducting a review under subsection (1), the Lord President must consult such persons or bodies as the Lord President considers appropriate.

[103]

(4C) If the Lord President considers that any person other than a category 1 or category 2 regulator may hold information relating to the performance of a category 1 or category 2 regulator's regulatory functions—

(a) the Lord President may ask the person to confirm whether they hold such information as the Lord President may specify in the request, and

(b) the person must respond to the request as soon as practicable and the response must include—

(i) confirmation of whether or not the person holds the information specified in the request, and

(ii) if any such information is held by the person, details of the nature of the information that is held.

[104]

(4A) Subsection (4B) applies if—

(a) the Lord President requests information from a category 1 or category 2 regulator in connection with an existing review under subsection (1) relating to the regulator, and

(b) the regulator fails, without a reasonable excuse, to provide some or all of the requested information within the 28 day period mentioned in subsection (4) (or within such longer period allowed by the Lord President to respond).

(4B) The Lord President may add the failure to the matter (or matters) being considered as part of the existing review but before doing so, the Lord President must notify the regulator in writing of the proposal and give the regulator an opportunity to respond within the period specified in the notice (which must be no fewer than 14 days from the date of the notice) to—

(a) provide all of the information requested under subsection (4), or

(b) provide a reasonable excuse for the failure to provide all of the requested information within the period specified in that subsection (or within such longer period allowed by the Lord President to respond to the notice under that subsection).

[105]

(5) Following a review under subsection (1), the ~~Scottish Ministers~~Lord President [106] must—

(a) prepare a report detailing ~~their findings and any measures they intend~~the Lord President's findings and any measures the Lord President intends [107] to take under section 20, and

(b) publish the report in such manner as ~~they consider~~the Lord President considers [108] appropriate. (having regard to the desirability of it being accessible to those likely to have an interest in the report), and

(c) send a copy of the report to—

(i) the regulator to which the review relates, and

(ii) if the review was conducted following a request under subsection (1)(b), the requesting body.

[109]

(5A) If a request for a review is made under subsection (1)(b) and the Lord President decides not to conduct a review under subsection (1), the Lord President must inform the requesting body in writing of the reasons for the Lord President's decision.

[110]

~~(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.~~

[111]

20 Measures open to the Scottish Ministers

(1) The ~~Scottish Ministers~~Lord President [112] 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~~the Lord President considers [113] that to be ~~appropriate~~necessary following a review under section 19(1) [114] .

(2) When considering ~~the appropriateness of taking~~whether it is necessary to take [115] any of those measures, or a combination of them, the ~~Scottish Ministers must have particular regard to~~Lord President must take account of [116] 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—

(a) setting performance targets,

(b) directing that action be taken,

(c) publishing a statement of censure,

~~(d) imposing a financial penalty,~~

[117]

(e) making changes to, ~~or removing some or all of~~[118], the regulatory functions exercised by the regulator,~~.~~

(f) making changes to the way in which any of the regulatory functions of the regulator are to be exercised by it,

[119]

(g) removing all of the regulatory functions exercised by—

(i) an accredited regulator, or

(ii) a body which has had an application under section 25 of the 1990 Act granted under section 26 of that Act.

[120]

~~(5) The Lord President's agreement is required for the taking of the measures mentioned in subsection (4)(a), (b), (c) or (e).~~

[121]

(6) The Scottish Ministers may by regulations—

(a) specify other measures that may be taken by ~~them~~the Lord President [310] in relation to category 1 and category 2 regulators,

(b) make further provision about the measures that ~~they~~the Lord President [311] may take (including for the procedures to be followed).

(6A) But the Scottish Ministers may exercise the power to make regulations under subsection (6) only following, and in accordance with, a request to exercise the power received from the Lord President.

(6B) Before making a request mentioned in subsection (6A), the Lord President must consult—

(a) each category 1 and category 2 regulator,

(b) the independent advisory panel of the Commission, and

(c) such other person or body as the Lord President considers appropriate.

(6C) A request under subsection (6A) must include—

(a) a document setting out the reasons for the request, and

(b) copies of any written representations received in response to the consultation under subsection (6B)

(6D) As soon as reasonably practicable after making a request under subsection (6A), the Lord President must publish the documents included with the request in such manner as the Lord President considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[122]

(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.

(8) Regulations under ~~this section~~subsection (6) [123] 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—

(a) does not apply to the provider, or

(b) applies to the provider with such modifications as may be specified in the direction.

(1A) A regulator may give a direction only if it is satisfied the direction is compatible with the regulatory objectives.

[179]

(2) A direction may be given ~~only if~~where [180] 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., or

(c) necessary or appropriate in the circumstances.

[181]

(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.~~requirement under this Act or any other enactment.

[182]

(4) Where a regulator considers that giving a direction for the purpose described in subsection (2)(a) [183] 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.~~

(5) A copy of a direction must be given to—

(a) the legal services provider to whom the direction relates, and

(b) if the direction falls within subsection (5A), the Lord President.

(5A) A direction falls within this subsection if—

(a) it disapplies or modifies such rules or types of rules as the Lord President may specify for the purpose of this section, and

(b) the Lord President has notified the regulator that copies of directions relating to such rules (or types of rules) are to be given.

[184]

(6) A direction—

(a) must specify—

(i) [185] the day on which it comes into force, and

(ii) the day on which it ceases to have effect or whether it is to have effect for an indefinite period,[186]

(b) may be subject to conditions, and

(c) may make different provision for different purposes.

(6A) A legal services provider to whom a direction relates must inform the regulator of any change of circumstances relevant to the direction.

[187]

(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.~~

[188]

(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—

(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 given for the purpose described in section 21(2)(a) [189] at any time by giving notice to—

(a) the regulator that gave the direction, and

(b) the legal services provider to whom the direction relates, ~~and~~

~~(c) the Scottish Ministers.~~[190]

(3) Section 21(2) to (8) applies to an amendment under subsection (1) as it applies to a direction.

(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.~~

~~(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.~~

~~(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.~~

~~(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 regulator under section 21(1) (including as it may be amended) that is still in force.~~

[191]

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,~~
[192]

(ii) the direction,

~~(iii) any application to amend the direction,~~
[193]

(iv) any amendments to the direction, and

~~(v) any report under section 23(4) on the direction, and~~ [194]

(b) specify—

(i) [195] the day on which the direction will cease to have effect (if not revoked earlier) or,

(ii) whether the direction is to have effect for an indefinite period.[196]

(3) A regulator—

(a) must ~~redact~~withhold [197] 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~~withhold [198] 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) for the purpose described in section 21(2)(a) [199] 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~~ [200] 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).

(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., and

(c) confirmation that the body has consulted its members in relation to the application and copies of any written representations received in response to the consultation.

[201]

26 Regulatory scheme

(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—

(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,

(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

(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—

(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~~imposition [202] of conditions or restrictions,

~~(c) the renewal of the authorisation to exercise the acquired rights,~~

[203]

(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~~ [204] ,

(ii) granting an application subject to conditions or restrictions,

(iii) suspending or withdrawing the authorisation.

(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,~~ [205] 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.

(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,

(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.

(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—

(za) include rules relating to reviews of final decisions of the body made in relation to complaints remitted (or treated as having been remitted) to the body under the 2007 Act in relation to its authorised providers,
[206]

(a) require publication of a final [207] 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~~any [208] 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—

(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,

(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.

26A Regulatory scheme - additional matters to be included: further provision

(1) The Scottish Ministers may exercise the power to make regulations under section 26(1) only if they have received a request to exercise the power from—

(a) the Lord President,

(b) an accredited regulator, or

(c) the independent advisory panel of the Commission.

(2) Before making a request under subsection (1), the person making the request ("the requester") must—

(a) consult—

(i) each accredited regulator (or each other accredited regulator if the requester is an accredited regulator),

(ii) the independent advisory panel of the Commission unless the panel is the requester,

(iii) the Competition and Markets Authority, and

(iv) such other person or body as the requester considers appropriate, and

(b) except where the requester is the Lord President, secure the Lord President's agreement to the making of the request.

(3) For the purpose of seeking the Lord President's agreement under subsection (2)(b), the requester must provide to the Lord President—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (2)(a).

(4) A request under subsection (1) must include—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (2)(a), and

(c) except where the requester is the Lord President, written confirmation of the Lord President's agreement to the making of the request.

(5) As soon as reasonably practicable after making a request under subsection (1), the requester must publish the documents included with the request in such manner as the requester considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[209]

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,

(aa) send a copy of its draft regulatory scheme to the following persons (and inform them that they may make written representations concerning the draft scheme in accordance with subsection (4))—

(i) the Competition and Markets Authority,

(ii) the Commission, and

(iii) the independent advisory panel of the Commission.

[210]

(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~~ [211] , 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~~the Lord President [212] , and

(b) be received by ~~them~~the Lord President [213] 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

(1) The Lord President ~~and the Scottish Ministers (acting together) are~~is [214] to consider an application submitted under section 25(1) and must—

~~(a) consult each other in considering the application, and~~ [215]

(b) consider any written representations made to ~~them~~the Lord President [216] in accordance with section 27(3) and (4).

(2) The Lord President ~~and the Scottish Ministers~~ [218] may not consider the application if ~~they are~~the Lord President is [217] not satisfied that the requirements of section 27 have been~~, and are being~~ [219]~~,~~ complied with.

(3) The Lord President ~~and the Scottish Ministers~~ [220] —

(a) may~~, either jointly or separately,~~[221] 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.~~ [222]

(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~~is [223] to consider the draft scheme as so adjusted.

(5) The Lord President ~~and the Scottish Ministers are~~ [224] , when considering a draft regulatory scheme, is—

(a) [225] 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, and~~.~~

(b) to consult—

(i) the Scottish Ministers,

(ii) the Competition and Markets Authority,

(iii) the independent advisory panel of the Commission, and

(iv) such other persons as the Lord President considers appropriate.[226]

(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.

~~(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.~~

~~(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).~~

[227]

29 Approval of application and giving effect to the regulatory scheme

(1) This section applies where the Lord President ~~and the Scottish Ministers have~~has [228] considered an application in accordance with section 28.

(2) If the Lord President ~~and the Scottish Ministers~~ [229] —

(a) ~~are~~is [230] satisfied with the draft regulatory scheme, the Lord President is to approve the application and inform the body,

(b) ~~are~~is [231] not satisfied with the draft scheme, the Lord President is to refuse the application and inform the body, giving written reasons for the refusal.

(2A) As soon as reasonably practicable after notifying the body under subsection (2) of the decision to approve or refuse the application, the Lord President must publish notification of the decision.

(2B) Notification under subsection (2A) must—

(a) include a summary of the Lord President's reasons for the decision, and

(b) be published in such manner as the Lord President considers appropriate (having regard to the desirability of the document being accessible to those likely to have an interest in it).

[232]

(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~~ [233]

(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.~~

(5A) If a body's application is approved under this section, as soon as reasonably practicable after receiving notice of the Lord President's approval under subsection (2), the body must—

(a) give effect to the draft regulatory scheme and apply it as its regulatory scheme in relation to its authorised providers and persons applying to it for authorisation, and

(b) publish its regulatory scheme in a manner that is accessible to the public, free of charge, by such electronic means as the body considers appropriate.

[234]

(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~~an accredited regulator has given effect to a draft regulatory scheme and applied it as its regulatory scheme under section 29(5A), [235] 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~~ [236] to surrender some or all of the acquired rights.

(1A) Before submitting an application under subsection (1), the accredited regulator must consult its authorised providers in relation to the proposed application.

(1B) An application under subsection (1) must include copies of any representations received in response to the consultation under subsection (1A).

[237]

(2) As soon as practicable after receipt of such an application, the ~~Scottish Ministers~~Lord President [238] 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~~such person or body (other than an authorised provider of the accredited regulator) as the Lord President considers appropriate, and [239]

(b) consult them accordingly.

(2A) Where an application under subsection (1) is for the surrender of all of the regulator's acquired rights, consultation under subsection (1A) with the body's authorised providers must, in particular, seek their views about whether a majority of the providers would like—

(a) another category 1 or category 2 regulator to authorise them to exercise their acquired rights and regulate their exercise of the acquired rights (if that other regulator is content to so authorise and regulate them), or

(b) to form a body and submit an application under section 25 seeking accreditation of the body to authorise them to exercise their acquired rights and regulate their exercise of the acquired rights.

[240]

(2B) A consultee under subsection (1A) has a period of 6 weeks beginning with the day on which the consultee receives notification from the accredited regulator of the opportunity to make representations (or, if the regulator considers it appropriate and the Lord President consents, such shorter period as may be specified in the notice) to make representations to the regulator about the proposed surrender.

[241]

(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~~Lord President considers [242] it appropriate, such shorter period as may be specified when sending a copy to the consultees) to make representations to the ~~Scottish Ministers~~Lord President [243] about the proposed surrender.

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

[244]

(5) The Lord President ~~and the Scottish Ministers (acting together)~~ [245] 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—

(za) [246] 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.

(c) be varied or revoked by the Lord President.

[247]

~~(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.~~

(7) Where the Lord President grants the application in respect of some or all of the acquired rights of the accredited regulator, the Lord President is to—

(a) give notice to the regulator specifying the date (or dates) on which it is to take effect, and

(b) publish the notice in such manner as the Lord President considers appropriate (having regard to the desirability of it being accessible to those likely to have an interest in it).

[248]

(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.

(10) Subsection (11) applies where—

(a) an application under subsection (1) is for the surrender of all of the regulator's acquired rights, and

(b) the majority of the providers consulted under subsection (1A) have expressed a preference for an outcome mentioned in paragraph (a) or (b) of subsection (2A).

(11) Notice given by the Lord President under subsection (7) may (instead of specifying the date on which the notice is to take effect) specify that the notice is to take effect on the date on which one of the following events occurs—

(a) the providers consulted under subsection (1A) are authorised to exercise their acquired rights (and are regulated in their exercise of the acquired rights) by another category 1 or category 2 regulator,

(b) an application submitted under section 25(1) by a body formed by those providers is approved or refused by the Lord President under section 29.

(12) Where a notice under subsection (7) specifies that the notice is to take effect on the occurrence of an event mentioned in subsection (11), subsection (9) has effect as if the reference to "the date specified in the notice" were a reference to "the date of the occurrence of the event mentioned in subsection (11) that is specified in the notice".

[249]

32 Offence of pretending to have acquired rights

(1) A person commits an offence if the person ~~with intent to deceive~~without reasonable excuse [250] —

(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.

(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

32A Review of regulatory scheme on initiative of accredited regulator

(1) This section applies where an accredited regulator has carried out a review of its regulatory scheme on its own initiative and proposes such revision to its scheme as it considers appropriate in light of the review.

(2) The accredited regulator must send a report to the Lord President detailing the proposed revision to the scheme.

(3) Following receipt of a report under subsection (2), the Lord President may—

(a) approve the proposed revision to the scheme,

(b) not approve the proposed revision to the scheme,

(c) direct the accredited regulator to make such revision to its scheme as the Lord President considers should be made.

(4) Following revision of its scheme pursuant to paragraph (a) or (c) of subsection (3), the accredited regulator must publish the revised scheme in a manner that is accessible to the public, free of charge, by such electronic means as the regulator considers appropriate.

(5) The Lord President may vary or revoke a direction given under subsection (3)(c).

[251]

33 Review of regulatory schemes

~~(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.~~

(1A) The Lord President may direct an accredited regulator to carry out a review of its regulatory scheme.

[252]

(2) Following a review, the accredited regulator must give the Lord President ~~and the Scottish Ministers~~ [253] 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~~considers [254] 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~~

~~(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.~~direct the accredited regulator to apply the revised scheme. [255]

(4) Subsection (5) applies where the Lord President ~~and the Scottish Ministers agree~~considers [256] —

(a) that—

(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.~~ [257]

(5) Where this subsection applies—

(a) the ~~Scottish Ministers~~Lord President [258] may direct the accredited regulator to apply the revisions ~~agreed with the Lord President~~that the Lord President considers should be made [259] 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.~~or

(b) the Lord President may—

(i) provide comments in relation to the proposed revisions to the regulatory scheme, and

(ii) direct the accredited regulator to take account of the comments in reviewing the proposed revisions before giving the Lord President a revised report containing any proposed revision to the scheme.

(5A) Subsections (3) to (5) apply in relation to a revised report given to the Lord President under subsection (5)(b) as they apply in relation to a report given to the Lord President under subsection (2).

[260]

~~(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.~~

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

[261]

(8) The Lord President may vary or revoke a direction given under this section.

[263]

(9) Following the revision of its regulatory scheme under this section, the accredited regulator must publish its revised scheme in a manner that is accessible to the public, free of charge, by such electronic means as the regulator considers appropriate.

[262]

34 Revocation of acquired rights

(1) Where it appears to the ~~Scottish Ministers~~Lord President [264] that an accredited regulator has failed to comply with a direction under section 32A(3)(c) or [266] 33(5), ~~they may by regulations~~the Lord President may [265] revoke the approval of the application under section 29.

~~(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.~~

(2) The Lord President must—

(a) give notice of the Lord President's decision to revoke approval of the application under section 29 (a "decision notice") to the regulator, and

(b) publish the decision notice in such manner as the Lord President considers most appropriate for bringing it to the attention of any relevant person or body.

[267]

(2A) Before issuing a decision notice, the Lord President must consult each person who is authorised by the accredited regulator to provide legal services ("the authorised providers") in relation to the proposed decision and, in particular, with a view to

determining whether, in consequence of the revocation of the accredited regulator's approval, a majority of the authorised providers would like—

(a) another category 1 or category 2 regulator to authorise them to exercise their acquired rights and regulate their exercise of the acquired rights if that other regulator is content to so authorise and regulate them, or

(b) to form a body and submit an application under section 25 seeking accreditation of the body to authorise them to exercise their acquired rights and regulate their exercise of the acquired rights.

(2B) Where a majority of the providers consulted under subsection (2A) have expressed a preference for an outcome mentioned in paragraph (a) or (b) of that subsection, the Lord President may decide not to issue a decision notice for such period as the Lord President considers appropriate to enable—

(a) another category 1 or category 2 regulator to authorise and regulate the providers, or (as the case may be)

(b) the providers to form a body and submit an application under section 25 in respect of that body.

[268]

(3) From such date as may be specified in ~~regulations made under subsection (1)~~a decision notice [269] , a person authorised by the accredited regulator ceases to be so authorised and may not exercise the rights acquired by virtue of that authorisation.

Miscellaneous

~~**35 Replacement regulatory arrangements for authorised providers**~~

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

~~(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.~~

~~(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.~~

~~(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.~~

~~(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.~~

35A Replacement regulatory arrangements for authorised providers

(1) Where an accredited regulator is a discontinuing regulator as mentioned in paragraph (d) of the definition of that term as set out in subsection (6), the Lord President must consult each authorised provider to determine in particular whether a majority of the authorised providers would like another category 1 or category 2 regulator to authorise them to exercise their acquired rights and regulate their exercise of the acquired rights (if that other regulator is content to so authorise and regulate them).

(2) Subsection (3) applies where the Lord President is satisfied that—

(a) following consultation under subsection (1), section 31(2) or 34(2A) or paragraph 29(2) of schedule 2 (as the case may be), a majority of the authorised providers of a discontinuing regulator would like another category 1 or category 2 regulator to authorise them to exercise their acquired rights and regulate their exercise of the acquired rights, and

(b) the other category 1 or category 2 regulator ("the receiving regulator") is willing to authorise and regulate the authorised providers of the discontinuing regulator.

(3) The Lord President may—

(a) in a case where the receiving regulator falls within subsection (4), amend the regulatory functions of the receiving regulator to enable it to regulate the authorised providers of the discontinuing regulator,

(b) in any other case, request that the Scottish Ministers make regulations under subsection (5) to amend the functions of the receiving regulator.

(4) A regulator falls within this subsection if it is an accredited regulator or a body which has had an application under section 25 of the 1990 Act granted under section 26 of that Act.

(5) Following a request of the Lord President under subsection (3)(b), the Scottish Ministers may lay a draft of a Scottish statutory instrument containing regulations before the Scottish Parliament to amend the regulatory functions of the receiving regulator.

(6) In this section—

"authorised provider" means a legal services provider that is authorised by a discontinuing regulator to provide legal services,

"discontinuing regulator" means an accredited regulator that—

(a) is the subject of a potential measure as mentioned in section 20(4)(g) to remove all of its regulatory functions,

(b) has made an application under section 31,

(c) is the subject of regulations to revoke its approval under section 34, or

(d) has ceased operating otherwise than in accordance with any of the ways mentioned in paragraph (a), (b) or (c),

"regulatory complaint" is to be construed in accordance with Part 1 of the 2007 Act,

"services complaint" is to be construed in accordance with Part 1 of the 2007 Act.

(7) Regulations under subsection (5)—

(a) may modify any enactment,

(b) are subject to the affirmative procedure.

[270]

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~~without reasonable excuse [271] , 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.~~

[272]

(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., or

(iii) a solicitor (or solicitors) and a qualifying individual (or individuals).

(2A) For the purpose of subsection (2)(b), a business may be wholly owned—

(a) directly or through one or more other bodies,

(b) partly directly and partly through one or more other bodies.

[273]

(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.

(6A) Before making regulations under subsection (6), the Scottish Ministers must—

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions, and

(iii) such other person or body as the Scottish Ministers consider appropriate, and

(b) publish copies of any written representations received in response to the consultation in such manner as they consider appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[274]

(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.

(8A) Subsection (8B) applies to a legal business—

(a) that intends to provide (or offer to provide) legal services to the public for fee gain or reward, and

(b) which was immediately before the coming into force of this section—

(i) a sole solicitor within the meaning given by section 45(5) of the 1980 Act,

(ii) a firm of solicitors within the meaning of that Act,

(iii) an incorporated practice within the meaning given by section 34(1A)(c) of that Act, or

(iv) a multi-national practice within the meaning given by section 65(1) of that Act.

(8B) On the coming into force of this section, a legal business to which this subsection applies is to be treated as authorised in accordance with this Part by the Law Society to provide legal services to the public for fee, gain or reward.

(8C) But the effect of subsection (8B) is subject to any alternative provision made by rules approved under section 41.

[275]

(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~~without reasonable excuse [276] —

(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.

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

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions, and

(iii) such other person or body as the Scottish Ministers consider appropriate, and

(b) publish copies of any written representations received in response to the consultation in such manner as they consider appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[277]

(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.~~

(c) publish its ALB rules in a manner that is accessible to the public, free of charge, by such electronic means as the regulator considers appropriate.

[278]

(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,

(iii) other services (in addition to legal services) that form part of the professional practice of solicitors, or qualifying individuals, within a legal business,

[279]

(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.~~

(4) A category 1 regulator may not amend its ALB rules (or any of them) without the prior approval of the Lord President.

[280]

(5) In ~~preparing (or amending)~~making any material amendment of [281] its ALB rules, a category 1 regulator must consult—

(a) its members,

~~(b) the Lord President,~~

[282]

(c) the Competition and Markets Authority,

(d) the Commission,

(e) the independent advisory panel of the Commission,

(f) Consumer Scotland, and

(g) such other persons or bodies it considers appropriate.

(5A) A category 1 regulator, in submitting an amendment of its ALB rules for approval under subsection (4), must submit copies of any written representations received in response to the consultation under subsection (5).

[283]

~~(6) The Scottish Ministers may by regulations—~~

~~(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.~~

[284]

(6A) The Scottish Ministers may exercise the power to make regulations under subsection (2)(c) only if they have received a request to exercise the power from—

(a) the Lord President,

(b) the regulatory committee of a category 1 regulator,

(c) a category 1 regulator that has no functions other than regulatory functions, or

(d) the independent advisory panel of the Commission.

(6B) Before making a request under subsection (6A), the person making the request ("the requester") must—

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions,

(iii) the independent advisory panel of the Commission, and

(iv) such other person or body as the requester considers appropriate, and

(b) except where the requester is the Lord President, secure the Lord President's agreement to the making of the request.

(6C) But a body mentioned in subsection (6B)(a)(i) to (iii) does not need to be consulted if the body is the requester.

(6D) For the purpose of seeking the Lord President's agreement under subsection (6B)(b), the requester must provide to the Lord President—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (6B)(a).

(6E) A request under subsection (6A) must include—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (6B)(a), and

(c) except where the requester is the Lord President, written confirmation of the Lord President's agreement to the making of the request.

(6F) As soon as reasonably practicable after making a request under subsection (6A), the requester must publish the documents included with the request in such manner as the requester considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[285]

(6G) In subsection (3)(a), a "qualifying individual" has the meaning given in section 39(8)

[286]

(7) Regulations under ~~this section~~subsection (2)(c) [287] are subject to the affirmative procedure.

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,

(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,~~the imposition of conditions or restrictions,

(ba) the circumstances in which conditions or restrictions may be imposed, varied or revoked in relation to the existing authorisation of a legal business,

[288]

(c) the—

~~(i) renewal of a legal business's authorisation,~~

[289]

(ii) circumstances in which a legal business's [290] authorisation may or must be reviewed, suspended or withdrawn,

(iii) circumstances in which an authorised legal business may surrender its authorisation,

[291]

(d) the fees that are (or may be) chargeable by the regulator in connection with authorisation, ~~including—~~

~~(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.~~

[292]

(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.

(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,

(b) provide for how a licensed provider may become an authorised legal business,

(c) provide for grounds for ~~non-renewal,~~ [293] 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,

(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).~~or such other criteria as may be specified in the rules). [294]

(3A) Authorisation rules may include rules or arrangements relating to the continued authorisation (or otherwise) of a legal business that is a partnership other than a limited liability partnership if—

(a) a person ceases to be a partner in the partnership, or

(b) a person is admitted as a partner into the partnership.

[295]

(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.

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.

(2) An appeal under subsection (1) must be made within the period of 3 months beginning with the later of—

(a) [296] the day on which the relevant authorisation decision is intimated to the applicant or, as the case may be, authorised legal business, or

(b) where the relevant authorisation decision has been the subject of an internal appeal process of the category 1 regulator, the day on which the decision of the internal

appeal is intimated to the applicant or, as the case may be, the authorised legal business.[297]

(3) A relevant authorisation decision is a decision taken under authorisation rules made in pursuance of this Part to—

(a) refuse an application for—

(i) authorisation of a legal business, ~~or~~

~~(ii) renewal of a legal business's authorisation,~~
[298]

(b) ~~attach conditions or restrictions to the grant of~~impose, vary or revoke conditions or restrictions in relation to [299] its authorisation, or

(c) suspend or withdraw its authorisation.

(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

(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,

(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.

(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 in relation to the authorisation [300] ,

(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,

(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.

(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

(1) Practice rules made in pursuance of section 44(1)(f) may provide for—

(a) [301] the imposition of a financial penalty.

(b) the withdrawal of the imposition of a financial penalty if the regulator considers that it would not be reasonable to seek (or to continue to seek) payment of the financial penalty.

[302]

(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).

(3A) Where a regulator collects a financial penalty imposed on an authorised legal business under subsection (3), the regulator may recover from the authorised legal business any expenditure reasonably incurred by the regulator in collecting the penalty.

[303]

(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.

(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.

(7A) Before making regulations under subsection (2), the Scottish Ministers must—

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions, and

(iii) such other person or body as the Scottish Ministers consider appropriate, and

(b) publish copies of any written representations received in response to the consultation in such manner as they consider appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[304]

(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

(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)—

(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

(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.~~

(4) The Scottish Ministers may exercise the power to make regulations under subsection (3) only if they have received a request from—

(a) the Lord President,

(b) the regulatory committee of a category 1 regulator,

(c) a category 1 regulator that has no functions other than regulatory functions, or

(d) the independent advisory panel of the Commission.

(4A) Before making a request under subsection (4), the person making the request ("the requester") must—

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions,

(iii) the independent advisory panel of the Commission, and

(iv) such other person or body as the requester considers appropriate, and

(b) except where the requester is the Lord President, secure the Lord President's agreement to the making of the request.

(4B) But a body mentioned in subsection (4A)(a)(i) to (iii) does not need to be consulted if the body is the requester.

(4C) For the purpose of seeking the Lord President's agreement under subsection (4A)(b), the requester must provide to the Lord President—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (4A)(a).

(4D) A request under subsection (4) must include—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (4A)(a), and

(c) except where the requester is the Lord President, written confirmation of the Lord President's agreement to the making of the request.

(4E) As soon as reasonably practicable after making a request under subsection (4), the requester must publish the documents included with the request in such manner as the requester considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[305]

(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~~business [306] —

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

(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~~imposed in relation to the authorisation [307]

,

(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.

(1A) But the Law Society's ALB rules are invalid unless they have the prior approval of the Lord President.

[308]

(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.~~

[309]

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 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~~ [452]), in subsection (2B)~~, at the end of the subsection~~(as substituted by paragraph 27V(10) of schedule 3), after paragraph (b) [453] 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.".~~

[454]

(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~~ [455] —

(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~~ [456] —

(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~~without reasonable excuse [457] —

(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.

(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.

(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.

(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).

(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.

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

(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.~~

(3) The Scottish Ministers may exercise the power to make regulations under subsection (1) only if they have received a request to exercise the power from—

(a) the Lord President,

(b) the regulatory committee of a category 1 regulator,

(c) a category 1 regulator that has no functions other than regulatory functions,

(d) an approved regulator within the meaning of Part 2 of the 2010 Act, or

(e) the independent advisory panel established by the Commission under paragraph 11A of the schedule 1 of the 2007 Act.

(3A) Before making a request under subsection (3), the person making the request ("the requester") must—

(a) consult—

(i) the regulatory committee (if any) of each category 1 regulator,

(ii) each category 1 regulator that has no functions other than regulatory functions,

(iii) each approved regulator within the meaning of Part 2 of the 2010 Act,

(iv) the panel mentioned in subsection (3)(e),

(v) such other person or body as the requester considers appropriate,

(b) except where the requester is the Lord President, secure the Lord President's agreement to the making of the request.

(3B) But a body mentioned in subsection (3A)(a)(i) to (iv) does not need to be consulted if the body is the requester.

(3C) For the purpose of seeking the Lord President's agreement under subsection (3A)(b), the requester must provide to the Lord President—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (3A)(a).

(3D) A request under subsection (3) must include—

(a) a document setting out—

(i) an explanation of the change sought by the proposed exercise of the power, and

(ii) the reasons for seeking the change,

(b) copies of any written representations received in response to the consultation under subsection (3A)(a), and

(c) except where the requester is the Lord President, written confirmation of the Lord President's agreement to the making of the request.

(3E) As soon as reasonably practicable after making a request under subsection (3), the requester must publish the documents included with the request in such manner as the requester considers appropriate (having regard to the desirability of the documents being accessible to those likely to have an interest in them).

[458]

(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**".

Lord President's functions under Parts 1 and 2: rule-making power

86A Lord President's functions under Parts 1 and 2: rule-making making power

(1) The Lord President may make rules in connection with the exercise of the Lord President's functions under Part 1 or 2 of this Act.

(2) Before making rules under subsection (1), the Lord President must consult—

(a) the independent advisory panel of the Commission, and

(b) each category 1 and category 2 regulator.

(3) Rules under subsection (1) may in particular require each category 1 and category 2 regulator to maintain a list of—

(a) its regulatory functions, and

(b) the requirements imposed on it under this Act or any other enactment.

(4) Rules under subsection (1)—

(a) may make different provision for different purposes,

(b) are to be published in such manner as the Lord President may determine.[459]

Minor and consequential modifications

87 Modification of other enactments

~~Schedule 3 contains~~Parts 3A and 4 of schedule 3 contain [460] 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.

(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,

(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

(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

(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).

(3) Regulations under subsection (1)—

(a) are subject to the affirmative procedure if they add to, replace or omit ~~and~~any [521] part of the text of an Act, but

(b) otherwise, are subject to the negative procedure.

91 Interpretation

(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,

"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),

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

"Association of ~~Commercial~~Construction [522] 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,

"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~~Complaints [523] Commission,

"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),

"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.

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.

(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 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~~Lord President [124] —

(a) ~~are~~is [125] 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~~considers [126] 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~~Lord President [127] 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~~Lord President decides [128] 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~~Lord President [129] 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~~Lord President is [130] 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~~Lord President [131] may direct the regulator to take—

(a) in a case falling within paragraph 4(a), such action as ~~they consider~~the Lord President considers [132] 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~~the Lord President considers [133] 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~~Lord President decides [134] 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~~Lord President [135] 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~~Lord President [136] must publicise that fact in such manner as ~~they consider~~the Lord President considers [137] most likely to bring it to the attention of any relevant person or body.

Enforcement

8 (1) If at any time it appears to the ~~Scottish Ministers~~Lord President [138] that a category 1 or category 2 regulator has failed to comply with a direction given under this Part, ~~they~~the Lord President [139] may make an application to the Court of Session for an order as described in sub-paragraph (2).

(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~~Lord President is [140] 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, 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~~Lord President [141] 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

11 Where the ~~Scottish Ministers decide~~Lord President decides [142] 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

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.

(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

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,

(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.

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),

(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).

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).

(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

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*~~

~~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.~~[143]

PART 5

MAKING CHANGES TO REGULATORY FUNCTIONS

Application

22 This Part applies when the ~~Scottish Ministers are~~Lord President is [144] 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~~Lord President [145] taking any of the measures mentioned in section 20(4)(a) to ~~(d)~~(c) [146] .

Power to make changes

23 (1) Where the Lord President is taking a measure mentioned in section 20(4)(e), the Lord President may~~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.~~

(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 Lord President may specify,

(b) in any other case, ask the Scottish Ministers to exercise the power under sub-paragraph (1C) to change the regulatory functions exercised by the regulator.

(1A) Where the Lord President is taking a measure mentioned in section 20(4)(f), the Lord President 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 Lord President may specify,

(b) in any other case, ask the Scottish Ministers to exercise the power under sub-paragraph (1C) to change the way in which any of the regulatory functions of the regulator are to be exercised by it.

(1B) Where the Lord President is taking a measure mentioned in section 20(4)(g) in relation to a regulator that falls within sub-paragraph (2), the Lord President may revoke the approval of the regulator's application under section 29 of this Act or, as the case may be, under section 26(6) of the 1990 Act.

(1C) Following a request from the Lord President under sub-paragraph (1)(b) or (1A)(b), the Scottish Ministers may by regulations make provision to change—

(a) the regulatory functions exercised by the regulator, or

(b) the way in which any of the regulatory functions of the regulator are to be exercised by it.

(1D) The Scottish Ministers may exercise the power under sub-paragraph (1C) only in accordance with such a request.[147]

(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)~~purposes of sub-paragraphs (1)(a) and (1A)(a) [148] , 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 of legal services providers regulated by the regulator to another regulator.~~

[149]

Decision

25 (1) Where the ~~Scottish Ministers decide~~Lord President decides [150] to proceed with a measure under this Part, the decision notice required under paragraph 30(2) must—

~~(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,~~

(a) state—

(i) in a case where the regulator falls within paragraph 23(2), the changes that the Lord President intends to direct the regulator to make to its scheme or, as the case may be, that the Lord President intends to remove all of the regulatory functions of the regulator,

(ii) in any other case, the changes that the Lord President intends to ask the Scottish Ministers to make to the regulatory functions exercised by the regulator or to the way in which any of the regulatory functions of the regulator are to be exercised by it, [151] and

(b) explain why the ~~Scottish Ministers consider~~Lord President considers [152] 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.

Parliamentary procedure for regulations

26 (1) The Scottish Ministers may not make regulations under paragraph ~~23(1)(b)~~23(1C) [153] unless—

(a) ~~they have~~the Lord President has [154] 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 (which consultation must provide at least 21 days for the consultees to respond),~~ [155]

(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.

(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.

PART 6

PROCEDURE FOR IMPOSING A MEASURE

Application

27 This Part applies to the ~~Scottish Ministers~~Lord President [156] 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~~Lord President [157] must give it a notice (a "notice of intention") of ~~their~~the Lord President's [158] intention to do so.

(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~~Lord President intends [159] to take,

(b) set out the details of what the ~~Scottish Ministers propose~~Lord President proposes [160] under the measure,

(c) explain why ~~they are~~the Lord President is [161] satisfied that it is appropriate to take the measure.

Consultation

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~~Lord President [162] may agree) to make representations to the ~~Scottish Ministers~~Lord President [163] about the proposed measure.

(2) The ~~Scottish Ministers~~Lord President [164] must—

(a) publish the notice of intention in such manner as ~~they consider~~the Lord President considers [165] 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~~such [166] person or body as ~~they consider~~the Lord President considers [167] appropriate,

(c) after the expiry of the period for representations—

(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~~measure [168] (which consultation must provide at least 21 days for the consultees to respond).

(2A) Where the proposed measure is to remove all of the regulatory functions of the regulator as mentioned in section 20(4)(g), the Lord President must—

(a) give a copy of the notice of intention under sub-paragraph (2)(b) to each person who is authorised by the regulator to provide legal services ("the authorised providers"), and

(b) consult the authorised providers in accordance with sub-paragraph (2)(c) about, in particular, in the event that all of the regulatory functions are removed from the regulator whether a majority of the authorised providers would like—

(i) another category 1 or category 2 regulator to authorise them to exercise their acquired rights (or such of them as may be surrendered) and regulate their exercise of the acquired rights (if that other regulator is content to so authorise and regulate them), or

(ii) to form a body and submit an application under section 25 seeking accreditation of the body to authorise them to exercise their acquired rights (or such of them as may be surrendered) and regulate their exercise of the acquired rights.

(2B) For the purpose of subsection (2A), the Lord President may direct the regulator to give to each of the authorised providers (on the Lord President's behalf) a copy of the notice of intention and the information required for the consultation.
[169]

~~(3) When consulted under sub-paragraph (2)(c), the Lord President is to—~~

~~(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)—~~

~~(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.~~
[170]

Decision

30 (1) The ~~Scottish Ministers~~Lord President [171] must have regard to any representations made to ~~them~~the Lord President [172] by the regulator, or any consultee under paragraph 29(2)(c), when deciding whether to proceed with the proposed measure.

(2) The ~~Scottish Ministers~~Lord President [173] must—

(a) give a notice of ~~their~~the Lord President's [174] decision (a "decision notice") to the regulator,

(b) notify the consultees under paragraph 29(2)(c) of ~~their~~the Lord President's [175] decision,

(c) publish the decision notice in such manner as ~~they consider~~the Lord President considers [176] most appropriate for bringing it to the attention of any relevant person or body.

(3) The decision notice must—

(a) explain the ~~Scottish Ministers'~~Lord President's [177] reasons for proceeding with the measure,

(b) set out the details of the action ~~they are~~the Lord President is [178] 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.

Regulation of Legal Services (Scotland) Bill - Keeling schedule (v2)

[16 JANUARY 2025]

This document has been prepared as a "Keeling schedule" to set out the changes that would be made to the Bill if the amendments lodged to date by the Scottish Government at Stage 2 were to be agreed. The changes are shown in red and blue. The amendment numbers also appear in square brackets after the changes made by each amendment. The document is provided to assist the lead committee's consideration at Stage 2. It will not reflect any other amendments agreed to by the lead committee at Stage 2 or by the Parliament at Stage 3. Although every effort has been made to ensure the accuracy of the information, it is provided for illustrative purposes only. It should be noted that the provisions in Part 3 and schedules 1 and 3 of the Bill are not included because they make changes to other legislation.

Introduced by:	Angela Constance
Supported by:	Siobhian Brown
On:	20 April 2023
Bill type:	Government Bill

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