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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Supplementary Delegated powers in the Regulation of Legal Services (Scotland) Bill (as amended at Stage 2)



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. The Committee considered the delegated powers in the Bill ("the Bill") at Stage 1 from September – November 2023. In light of the number of significant delegated powers in the Bill, and the serious concerns of some stakeholders responding to the lead committee's call for views about those powers, the Committee agreed to take oral evidence on the delegated powers provisions in the Bill.
2. The Committee took oral evidence about the delegated powers in the Bill from Esther Robertson, author of *Fit for the Future*, Report of the Independent Review of Legal Services Regulation in Scotland, the Law Society of Scotland and the Faculty of Advocates on [24 October 2023](#). It then heard from the Minister in Charge of the Bill, the Minister for Victims and Community Safety, Siobhian Brown MSP, on [7 November 2023](#).
3. Following evidence at this meeting that the Minister was seeking to make a number of changes to the Bill, including transferring some of the proposed [delegated powers](#) from Ministers to the Lord President, and building in further 'consent mechanisms', which would seek the Lord President's consent before regulation-making powers are used, the Committee [wrote](#) to the Lord President seeking his view on the appropriateness of the proposed changes to the Bill. The Lord President [responded](#) to the Committee's letter on 17 November 2023. The Lord President's office also gave oral evidence to the lead committee on [28 November 2023](#).
4. The Committee published its Stage 1 [report](#) on 23 November 2023.

Delegated Powers

5. The amended powers in the Bill as amended are listed below. However, it is worth noting that all of the powers that the Committee raised concerns about in its Stage 1 report have been removed or revised.
6. The powers that have been removed from the Bill entirely include those that the Committee and stakeholders were most concerned about: the power to modify regulatory objectives and professional principles (previously at section 5(1)), and the power to intervene (previously at section 49(1)). The power to make provision about replacement regulatory arrangements for authorised providers (previously section 35(1)), and the power to make provision allowing category 1 regulators to extend the scope of their authorised legal business (“ALB”) rules to capture other services provided by the businesses that they regulate, have also been removed. Powers previously at section 29(4)(a) and section 33(3) and (5), which the Committee was content with in its Stage 1 report, have been removed.
7. It is also worth noting that the previous Lord President (Lord Carloway) wrote to the lead committee, the Equalities, Human Rights and Civil Justice (“EHRCJ”) Committee ahead of Stage 2, setting out the position of the senior judiciary in relation to the Scottish Government Stage 2 amendments which were shared in confidence with them. That letter noted “Our significant constitutional concerns have been addressed.”
8. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of powers

Section 8(5)(a) – Regulatory categories

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

9. Section 8 sets out that a regulator of legal services is subject to different requirements according to whether it is assigned as a category 1 or a category 2 regulator. It assigns the Law Society of Scotland as a category 1 regulator, and the Faculty of Advocates and Association of Construction Attorneys as category 2 regulators.
10. Category 1 regulators would be those regulators with a significant membership or whose members provide largely consumer-facing services. Category 2 regulators would be those regulators whose membership is less consumer-facing or more specialist in nature in terms of the legal work undertaken, and whose membership is comparably less in number.
11. Section 8(5) confers a power on the Scottish Ministers enabling the amendment of section 8 to add a regulator which has been assigned a category under section 29(4) of the Bill, remove a regulator from a category or reassign a regulator to a different category. The Law Society and the Faculty of Advocates are outwith the scope of the power and may not be reassigned to a different category.
12. Regulations under section 8(5) are subject to the affirmative procedure. The power may only be exercised upon a request from the Lord President to make such regulations. Before making such a request of the Scottish Ministers, the Lord President must consult with the body whose category the Lord President is proposing to be reassigned, the independent advisory panel of the Commission, the other category 1 and category 2 regulators and each approved regulator of licensed providers. A request to the Scottish Ministers must include a document setting out the reasons for the request, and copies of any written representations received in response to the consultation.

Committee consideration

13. The power has been revised at Stage 2. The Committee recommended in its Stage 1 report that the power should not be delegated, citing doubts around the necessity of the power.
14. The Scottish Government explains in its sDPM that the power has been amended to narrow the power, in order that it does not apply to the Law Society of Scotland or the Faculty of Advocates. The amendments also restrict the use of the power to those circumstances where the Lord President has requested that regulations are

made.

15. Whilst no further explanation has been provided as to the necessity of the power, the Committee is reassured that the amendments provide a safeguard that the power would only be exercised in the event that it did become necessary to reassign categories. Given that the Law Society of Scotland and the Faculty of Advocates are well-established regulators in Scotland and have been for some time, it is difficult to envisage circumstances in which they would require to be reassigned categories. It therefore appears appropriate that those regulators are excluded from the scope of the power. It is more foreseeable that new regulators approved and assigned a category under section 29 of the Bill may require to be reassigned at some point in the future, should their nature or membership change.

16. **In light of the amendments at Stage 2, the Committee finds the power acceptable in principle. It is content that its exercise will be limited to those circumstances that the Lord President has requested that Scottish Ministers make such regulations, and that its exercise will be subject to the affirmative procedure.**

Section 14(8) – Compensation funds

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

17. Section 14 provides that 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.
18. Section 14(4) sets out rules that a category 1 regulator must have in relation to the fund, such as the minimum monetary amount to be contained in the fund and the procedures for making and determining a claim. Section 14(8) provides that the Scottish Ministers may by regulations make further provision in connection with funds established under section 14 and the rules the regulator must have for such funds.
19. The power may only be exercised by the Scottish Ministers where they have received a request to do so from either the Lord President, a category 1 regulator or the Consumer Panel. Where the Lord President is not the requestor, the Scottish Ministers must obtain the Lord President's agreement before making such regulations.
20. The power is subject to the affirmative procedure.

Committee consideration

21. The Committee was content with this power in its Stage 1 report. The power has

been amended to include the requirement that the power may only be exercised following a request for regulations to be made. The procedure attached to the power has also been changed from negative to affirmative.

22. The Scottish Government states in its sDPM that the power has been amended to give the Lord President a greater role. It also states that the change in parliamentary procedure is to align the procedure with the procedure that will apply in respect of the new power inserted by paragraph 6 of schedule 1 (Client Protection Fund under the Solicitors (Scotland) Act 1980) of the Bill.
23. Given that the Committee was content with the power at Stage 1, and that further safeguards on the exercise of the power have been built in at Stage 2, there are no causes for concern with this power.

24. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.

Section 20(6) – Measures open to Scottish Ministers

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

25. Section 20 of the Bill sets out the measures that the Lord President may take in relation to a category 1 or category 2 regulator following a review of their regulatory performance. Such measures include setting performance targets, imposing financial penalties and changing or removing some or all of the regulator's regulatory functions. Section 20(6) confers a power on the Scottish Ministers to make regulations specifying other measures which may be taken by the Lord President, and to make further provision about the measures that they may take.
26. The Scottish Ministers may only exercise the power in section 20(6) following a request from the Lord President. Before making such a request, the Lord President must consult each category 1 and category 2 regulator, the independent advisory panel of the Commission and such other person or body as the Lord President considers appropriate. A request must include a document setting out the reasons for the request and copies of any written representations received in response to the consultation exercise.
27. The power is subject to the affirmative procedure.

Committee consideration

28. On introduction, the provision enabled the Scottish Ministers to conduct the review and take the measures mentioned above. The delegated power was subject to the Lord President's approval. The Committee heard evidence on this power at Stage 1 and stated in its report that it was not content with the power as drafted.

29. The Bill has been amended in order that it is the Lord President who would be carrying out the review, and taking the measures open to him by virtue of section 20. The Scottish Ministers' power is therefore limited to those circumstances that the Lord President has made a request for it to be exercised, in order to specify more measures that may be open to him. The Scottish Ministers must also have the consent of the Lord President before making the regulations.
30. It appears that the power may now only be exercised in limited circumstances, and after extensive consultation. The Committee is therefore content with the power as revised.

31. **In light of the amendments at Stage 2, the Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Sections 26 and 26A – Regulatory scheme

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

32. Section 25 of the Bill provides that a body may apply to the Lord President in order to become accredited to enable their members to: acquire rights to conduct litigation on behalf of members of the public, rights of audience, or the right to provide other types of legal services. Section 25(4) provides that a draft regulatory scheme must accompany an application for accreditation, and section 26 sets out what the draft regulatory scheme must contain and set out.
33. Section 26(1)(d) confers a power on the Scottish Ministers to specify other regulatory matters which should be included in such a scheme.
34. The Scottish Ministers may only exercise this power if they receive a request from the Lord President, an accredited regulator or the Consumer Panel following a period of consultation with specified bodies. The Lord President's consent is required where he is not the requestor. Before making such a request, the requestor must consult each accredited regulator, the independent advisory panel of the Commission (unless it is the requestor), the Competition and Markets Authority and such other persons the body considers appropriate.
35. The power is subject to the affirmative procedure.

Committee consideration

36. The Committee was content with the power at Stage 1. The Committee notes the additional safeguards that are now in place, and remains content with the power.

- 37. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 35A(5) – Discontinuing regulators

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

New or revised power: new

Provision

38. Section 35A was introduced at Stage 2. It gives the Lord President powers to deal with cases where a regulator ceases to operate (“the discontinuing regulator”) by determining an alternative regulator (“the receiving regulator”) to authorise and regulate the authorised providers of legal services who are/were regulated by the discontinuing regulator.
39. Where the receiving regulator is either an accredited regulator or a body who has had an application under section 25 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 granted, the Lord President can amend the regulatory function of the receiving regulator to enable it to regulate the authorised providers of the discontinuing regulator. In any other case, the Lord President can request that the Scottish Ministers make regulations to amend the regulatory functions of a receiving regulator in order to regulate the legal services providers.
40. The power is subject to the affirmative procedure.

Committee consideration

41. The power replaces the “replacement regulatory arrangements for authorised providers” powers which was at section 35(1) of the Bill on introduction. The Committee heard evidence on this power and stated in its report that it was not content with it as drafted. That power would have enabled Scottish Ministers to, by regulations, make provision establishing a body with a view to becoming a regulator for the purposes of regulating the authorised providers of a discontinuing regulator.
42. The Committee’s Stage 1 report cited concerns from stakeholders that the power would enable the Scottish Ministers to directly regulate the legal profession and that the power was much broader than necessary.
43. In light of the new safeguards, it appears that the power may only be exercised in limited circumstances where the Lord President considers it necessary, and as such the Committee is content with the power as revised.

- 44. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 39(6) - Requirement for legal businesses to be authorised to provide legal services**Power conferred on: The Scottish Ministers****Power exercisable by: Regulations made by Scottish Statutory Instrument****Parliamentary procedure: Negative****New or revised power: revised****Provision**

45. Section 39 of the Bill provides that legal businesses must be authorised to provide legal services to the public by the category 1 regulator that is responsible for the regulation of the owners of the legal business. Section 39(4) provides that it is an offence for a person to own or operate a legal business without it being authorised, and section 39(5) provides that a person committing such an offence is liable on conviction to a fine up to a maximum of £20,000. Section 39(6) confers a power on the Scottish Ministers to amend the maximum fine.
46. Regulations made under this power would be subject to the negative procedure.

Committee consideration

47. The Committee was content with the power in its Stage 1 report. Stage 2 amendments inserted new subsection (6A) requiring the Scottish Ministers, before making any such regulations, to consult each category 1 regulator and such other person or body as the Scottish Ministers consider appropriate. The Scottish Ministers are also required to publish copies of any written representations received from the consultees.
48. The Scottish Government states in its sDPM that the power is required to allow for flexibility to adjust the maximum amount to reflect inflation. It states that such regulations would not raise any issue of complexity.
49. It is common and reasonable for Bills providing for maximum levels of financial penalty to include a delegated power allowing for this figure to be changed from time to time. Such powers are commonly exercised subject to the negative procedure. Therefore the Committee accepts the power in principle and is content that it is subject to the negative procedure.

50. **The Committee is content with the power in principle, and that it is subject to the negative procedure.**

Section 40(3) – Offence of pretending to be an authorised legal business**Power conferred on: The Scottish Ministers****Power exercisable by: Regulations made by Scottish Statutory Instrument****Parliamentary procedure: Negative**

New or revised power: revised.

Provision

51. Section 40 provides that it is an offence to pretend to be an authorised legal business, and a person who commits this offence may be liable on summary conviction to a fine not exceeding £20,000. Section 40(3) provides that the Scottish Ministers may make regulations to amend the maximum fine.
52. Regulations made under this power would be subject to the negative procedure.

Committee consideration

53. The Committee was content with this power at Stage 1. Amendments at Stage 2 mean that the Scottish Ministers are required to consult each category 1 regulator and such other person or body as the Scottish Ministers consider appropriate. This is a further safeguard against the use of a power that the Committee was initially accepting of, and as such the Committee is content with the revised power.

54. **The Committee accepts the power in principle and is content that it is subject to the negative procedure.**

Section 41(2) - Rules for authorised legal business

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

55. Section 41 of the Bill sets out that a category 1 regulator must make rules authorising and regulating legal business (“ALB rules”), apply the rules in relation to those businesses that they regulate and make the rules publicly available.
56. Section 41(2) provides that the rules are to contain authorisation rules and practice rules as well as including provision for reconciling different sets of regulatory rules, and deal with such other regulatory matters as the Scottish Ministers may by regulations specify.
57. The power may only be exercised upon request by the Lord President, a category 1 regulator, or the Consumer Panel.
58. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

59. The Committee heard evidence on this power and recommended, in its Stage 1 report, that the Scottish Government should review how it operates.

60. The Committee heard concerns regarding the breadth of the power, and the potential encroachment of ministerial power into the authorisation rules and practice rules for legal businesses.
61. Amendments at Stage 2 have narrowed the circumstances in which the power may be used, to those circumstances in which a request has been made by the Lord President, a category 1 regulator or the Consumer Panel. It therefore appears that the power would only be exercised where it is deemed necessary by the Lord President, a category 1 regulator or the Consumer Panel.
- 62. The Committee find the power acceptable in principle and is content it is subject to the affirmative procedure.**

Section 45(2) – Financial sanctions

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

New or revised power: revised

Provision

63. Section 45 provides that a financial penalty may be provided for in the practice rules, relating to the measures an accredited regulator may take where an authorised legal business breaches the regulatory scheme or where a complaint against such a business is upheld. Section 45(2) confers a power on the Scottish Ministers to specify by regulations the maximum amount of that financial penalty.
64. The Scottish Ministers must not make such regulations without the consent of the Lord President.
65. Regulations made under this power would be subject to the negative procedure.

Committee consideration

66. The Committee was content with this power in its Stage 1 report. A new subsection (7A) was inserted at Stage 2 requiring the Scottish Ministers to consult each category 1 regulator and such other person or body as they consider appropriate (and publishing any written representations made by the consultees) before making regulations.
67. The Scottish Government states in its sDPM that the power is necessary to allow flexibility in adjusting the maximum level from time to time to reflect inflation or changes in the market. It states that it does not consider that such regulations will raise any issue of complexity and therefore the negative procedure is appropriate.
68. It is common and reasonable for Bills which include monetary amounts to include a delegated power allowing for this figure to be changed from time to time. Such powers are commonly exercised subject to the negative procedure. The inclusion of the requirement to obtain the consent of the Lord President is an additional

safeguard.

69. Therefore the Committee is content with the revised power.

70. The Committee is content with the power in principle, and that it is subject to the negative procedure.

Section 46(3) – Reconciling different rules

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

New or revised power: revised

Provision

71. Section 41(2)(b) requires that ALB rules are to include provision for reconciling different sets of regulatory rules. Section 46 provides that the requirement is for such provision as is reasonably practicable for preventing or resolving regulatory conflicts and avoiding unnecessary duplication of regulatory rules. Section 46(3) provides that the Scottish Ministers may make regulations making further provision about regulatory conflicts.

72. The Scottish Ministers must obtain the Lord President’s consent before making such regulations.

73. Regulations made under this power would be subject to the negative procedure.

Committee consideration

74. The Committee heard evidence from the Law Society which said it was, “really struggling to think of a circumstance or situation in which a regulatory conflict could be resolved by Scottish legislation”.

75. In her evidence, the Minister stated that the power allows the Scottish Ministers the flexibility to ensure that regulatory conflicts can be resolved, where it proves to be impossible or unduly complicated for the general regulators to resolve such conflict. She said that secondary legislation is the appropriate vehicle for this, to respond to the detailed circumstances of any particular conflict that may arise which would be likely to require quick resolution.

76. The Committee recommended at Stage 1 that additional safeguards should be built into the power, including that such regulations may only be made on request from the Lord President.

77. The Bill has been amended at Stage 2 to replace the consent requirement with a requirement that Scottish Ministers may only make regulations under this power on the request of the Lord President, a category 1 regulator, or the Consumer Panel. Given that the amendments address the Committee’s concerns, the Committee is content with the revised power.

78. The Committee is content with the power in principle, and that it is subject to the negative procedure.

Section 71C(2) – Restriction on disclosure of information: Commission

Power conferred on The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

New or revised power: new

Provision

79. New section 71C of the Bill was inserted at Stage 2 and amends section 43 of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”). It removes a restriction on the disclosure of certain information about complaints.
80. It allows Ministers to specify in regulations a “regulatory body” with who the Scottish Legal Complaints Commission may disclose information about complaints “for the purpose of enabling or assisting a regulatory body [as defined] to exercise any of the body’s functions”.
81. Before making regulations, the Scottish Ministers must consult with any regulatory body that is proposed to be specified by the regulations, the Lord President, the Scottish Legal Complaints Commission, the Consumer Panel and certain approved regulators, publish a report on the consultation and confirm that the Lord President agrees with the proposal to make the regulations.
82. The power is subject to the negative procedure.

Committee consideration

83. This provision was added to the Bill at Stage 2 by amendment. The Scottish Government states in its sDPM that the power will enable further regulatory bodies to be added in the future if required, should it become necessary to enable the sharing of information with that regulatory body.
84. The power appears appropriate in principle. It would seem sensible that regulatory bodies have access to information that enables them to exercise the functions. Given the purpose of the Bill is to enable more bodies to become regulatory bodies, it seems appropriate to include a power to specify regulatory bodies which may become regulators under this Bill.

85. The Committee accepts the power in principle and is content that it is subject to the negative procedure.

Section 71E: Restriction on disclosure of information: relevant professional organisations

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

New or revised power: new

Provision

86. New section 71E of the Bill was inserted at Stage 2 and amends section 52 of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”). It removes a restriction on the disclosure of certain information about complaints.
87. It allows Ministers to specify in regulations a “regulatory body” with who relevant professional organisations may disclose information about conduct or regulatory complaints “for the purpose of enabling or assisting a regulatory body [as defined] to exercise any of the body’s functions”.
88. Before making regulations, the Scottish Ministers must consult with any regulatory body that is proposed to be specified by the regulations, the Lord President, the Scottish Legal Complaints Commission, the Consumer Panel and certain approved regulators, publish a report on the consultation and confirm the Lord President agrees with the proposal to make the regulations. The Scottish Ministers must also confirm that the Lord President agrees with the proposal to make the regulations.
89. The power is subject to the negative procedure.

Committee consideration

90. As above, this provision was added to the Bill at Stage 2 by amendment. The Scottish Government states in its sDPM that the power will enable further regulatory bodies to be added in the future if required, should it become necessary to enable the sharing of information with that regulatory body.
91. The power appears appropriate in principle. It would seem sensible that regulatory bodies have access to information that enables it to exercise its functions. Given the purpose of the Bill is to enable more bodies to become regulatory bodies, it seems appropriate to include a power to specify regulatory bodies which may not yet be in existence.

92. **The Committee accepts the power in principle and is content that it is subject to the negative procedure.**

Section 86 inserting new section 32A into the 1980 Act: Power to adjust what constitutes restricted legal services

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

93. Section 32 of the Solicitors (Scotland) Act 1980 makes it an offence for unqualified persons to prepare certain documents. Section 86 of the Bill inserts new section 32A into the 1980 Act to provide that the Scottish Ministers may, by regulations, amend section 32 of the 1980 Act to make provision for or in connection with it being an offence for an unqualified person to draw or prepare certain documents or to provide certain other legal services. In particular, the power allows Scottish Ministers to add, amend or remove a description of the documents that may not be drawn or prepared or the type of legal services that may not be provided by an unqualified person without committing an offence, or add, amend or remove exemptions to the offence in relation to some or all of the documents or services.
94. The Scottish Ministers can only make regulations if requested to do so by the Lord President, a category 1 regulator, an approved regulator or the consumer panel. Where the Lord President is not the requestor, the other bodies must first obtain the Lord President's agreement before making such a request.
95. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

96. The Committee accepted the power in principle at Stage 1 but suggested that the exercise of the power should be subject to additional parliamentary scrutiny.
97. The amendments at Stage 2 introduced the requirement that Scottish Ministers can only make the regulations if they have received a request to do so from the Lord President, a category 1 regulator, an approved regulator (as defined) or the Consumer Panel. The agreement of the Lord President is also required where they have not requested the making of the regulations. New subsections (3B) to (3E) are inserted into new section 32A setting out the procedure and requirements which must be followed where a person or body intends to request the Scottish Ministers to make regulations.
98. Although the amendment does not provide the additional parliamentary scrutiny called for by the Committee, the Committee finds that the additional safeguards introduced are sufficient combined with the affirmative procedure.

- 99. The Committee accepts the power in principle and is content that it is subject to the affirmative procedure.**

Schedule 1, Paragraph 6 inserting section 43A into the 1980 Act: Guarantee fund: further provision

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

100. Paragraph 6 of schedule 1 makes further provision about the guarantee fund. Paragraph 6(6) inserts a new section 43A into the 1980 Act and provides that the Scottish Ministers may make provision in relation to the guarantee fund and in particular modify section 43 and schedule 3 of that Act, such as amending the maximum amount of an individual grant.
101. Before making such regulations, the Scottish Ministers must consult the Lord President, the Law Society's regulatory committee and the Consumer Panel.
102. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

103. The Committee recommended at Stage 1 that additional safeguards are built into the power including that such regulations may only be made on request from certain bodies, and that there should be a requirement that the Scottish Ministers obtain the Lord President's consent before making the regulations.
104. The Bill has been amended at Stage 2 to include a requirement that the Scottish Ministers may only make such regulations upon request from the Lord President, the regulatory committee or the Consumer Panel. Agreement of the Lord President is required when they are not the requestor.
105. Given the Bill has been amended in line with the Committee's recommendations, the Committee is content with the revised power.

106. **The Committee accepts the power in principle and is content that it is subject to the affirmative procedure.**

Schedule 2, Paragraph 23: Making changes to regulatory functions

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

New or revised power: revised

Provision

107. Paragraph 23 of schedule 2 provides that where a regulator has acted or failed to act in a way which has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, and the matter cannot be addressed adequately by the Lord President taking any of the measures mentioned in section 20(4)(a) to (d), then the Scottish Ministers may make regulations making provision to change or remove some or all of the functions of the regulator.
108. The Scottish Ministers may not make regulations unless requested to do so by the Lord President. Regulations may not be made unless the regulator has been given a decision notice, and draft regulations and an explanatory document has been laid before the Scottish Parliament and approved by resolution of the Parliament.

109. The power is subject to the affirmative procedure.

Committee consideration

110. The Committee was not content with the power at Stage 1. It stated that much more information would be needed about the detail of how the Government's proposals are intended to operate.

111. On introduction, power to make changes to or remove some or all of the functions of a regulator lay with the Scottish Ministers, without any requirement to consult or to obtain the consent of the Lord President, the regulation making power can now only be exercised if a request is made by the Lord President. The Committee considers that this serves as a sufficient safeguard in ensuring that the power is only exercised in the most necessary of circumstances.

112. In light of the new safeguards, the Committee accepts the power in principle and that it is subject to the affirmative procedure.

Schedule 3, para 22A(8), inserting section 53ZAA(10) of the 1980 Act: Powers of Tribunal: unsatisfactory professional conduct

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

parliamentary procedure: Negative

New or revised power: new

Provision

113. Paragraph 22A(8) inserts new section 53ZAA into the 1980 Act. It confers on the Scottish Ministers the ability to amend the maximum penalty that may be imposed by the Scottish Solicitors' Discipline Tribunal on finding that a solicitor is guilty of unsatisfactory professional conduct following an investigation into a complaint of professional misconduct, and not being satisfied that the solicitor concerned is guilty of professional misconduct. The maximum penalty is set at £2,000.

114. The Scottish Ministers may amend the maximum penalty by any amount which can be justified by a change in the value of money.

115. Regulations made under this power are subject to the negative procedure.

Committee consideration

116. This is a new power inserted by amendment at Stage 2. The Scottish Government states in its sDPM that the provision allows for flexibility to adjust the maximum fine from time to time to reflect inflation.

117. It is common and reasonable for Bills providing for maximum levels of financial penalty to include a delegated power allowing for this figure to be changed from time to time. Such powers are commonly exercised subject to the negative procedure.

118. The Committee find the power acceptable in principle, and is content that it is subject to the negative procedure.

Schedule 3, para 9A(11), inserting section 62B(1) of the 1980 Act: Power to end application of regulatory complaints provisions to licensed providers

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

New or revised power: new

Provision

119. Paragraph 9A(11) of schedule 3 inserts new section 62B into the 1980 Act. It confers a power on the Scottish Ministers to amend section 42E, 53ZE, 54B and 55B to disapply those sections to licensed providers, or where those sections have been disapplied, to reapply those sections.

120. Regulations under this power may include incidental, supplementary, consequential, transitional, transitory or saving provision.

121. Regulations under this power are subject to the negative procedure.

Committee consideration

122. This is a new power added by amendment at Stage 2. The Scottish Government states in its sDPM that the power is taken in order to align the regulatory complaints procedure set out in 1980 Act and the Legal Services (Scotland) Act 2010. It states that the power relates to procedural matters and do not raise any issues of complexity, and as such the negative procedure is appropriate.

123. It is the Committee's view that the Scottish Government's justification in the sDPM is sufficient.

124. The Committee accepts the power in principle, and is content that it is subject to the negative procedure.

Schedule 3, paragraph 27(2)(b), inserting new section 19(2) of the 2010 Act: Legal Services (Scotland) Act 2010

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

New or revised power: new

Provision

125. Paragraph 27(2)(b) of schedule 3 amends section 19 of the Legal Services (Scotland) Act 2010 to confer a power on the Scottish Ministers to specify in regulations a maximum penalty that may be imposed as a financial sanction under that Act in respect of a breach of the regulatory scheme or where a complaint has been upheld, in relation to the licensed provider or another person within the licensed provider.
126. Before making such regulations specifying the maximum penalty, the Scottish Ministers must consult each approved regulator, and such other persons or bodies considered appropriate. The Scottish Ministers must also obtain the Lord President's agreement before making such regulations.
127. Regulations made under this power are subject to the negative procedure.

Committee consideration

128. This is a new power added by amendment at Stage 2. The Scottish Government states in its sDPM that the power allows Ministers flexibility to specify the maximum penalty when appropriate.
129. It is common and reasonable for Bills which provide for financial penalties to take a power to set, and change from time to time, the maximum level of fine. Whilst the Parliament will likely have an interest in the level that is set, it is considered that the negative procedure provides a sufficient opportunity for scrutiny.

130. **The Committee accepts the power in principle, and is content that it is subject to the negative procedure.**

