

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – the Legal Profession

Chapter 2 – Faculty of Advocates

Section 120 – Regulation of the Faculty

241. **Section 120** sets out in statute the existing position regarding regulation of advocates, namely that the Court of Session is responsible for admitting and removing persons from the public office of advocates (including setting the criteria for admission and prescribing the procedure) and for regulating the professional practice, conduct and discipline of advocates. It can delegate any of this except the actual admitting and removal to the Lord President or the Faculty. In practice, the bulk of regulation is currently delegated to the Faculty and the Dean, including rules of professional conduct and disciplinary procedures.

Section 121 – Professional rules

242. Subsection (2) requires that all rules or changes to rules made by the Faculty relating to the criteria or procedure for admission or removal of advocates, and relating to regulating the professional practice, conduct and discipline of advocates must be approved by the Lord President and be published by the Faculty. If these requirements are not met then the rule is of no effect. Where a rule is made otherwise than by the Faculty, it is of no effect unless the Faculty has been consulted on it (subsection (3) (a)). If the Court of Session makes or changes these rules it must be by Act of Sederunt (subsection (3)(b)(ii)). If the Lord President makes or changes these rules, he must publish them (subsection (3)(b)(i)).
243. Subsections (4) and (5) make it clear that this section does not change any rule relating to the professional practice, conduct and discipline of advocates that was in force at the time this section comes into force and that those rules regulating the professional practice of advocates (particularly relating to their involvement in and with licensed providers) still apply unless some other necessary step is taken, such as revocation of a rule.

Section 122 – Particular rules

244. **Section 122** requires that the Scottish Ministers must consult the OFT and approve a change in any professional practice, conduct or disciplinary rule which prevents advocates from forming legal relationships, such as partnerships, before such a rule can have effect. It supersedes a similar rule in section 31 of the 1990 Act (which is repealed by section 122(4) of the Act).