Legal Services (Scotland) Act 2010

2010 asp 16

PART 4

THE LEGAL PROFESSION

CHAPTER 1

APPLYING THE REGULATORY OBJECTIVES

119 Application by the profession

(1) Each of the regulatory authorities mentioned in subsection (2) must, so far as practicable when exercising the authority's regulatory functions (as defined in subsection (3)), act in a way which—

(a) is compatible with the regulatory objectives, and

(b) it considers most appropriate with a view to meeting those objectives.

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

(a) the Court of Session,

(b) the Lord President,

(c) the Faculty of Advocates,

(d) the Council of the Law Society,

(e) any other person who or body that has regulatory functions in relation to the provision of legal services by legal practitioners (of any type).

(3) For the purpose of this section, the regulatory functions of a regulatory authority—

(a) are its functions of regulating in respect of any matter the professional practice, conduct and discipline of legal practitioners (of any type),

(b) include its functions of making professional or regulatory rules to which legal practitioners (of any type) are subject.

(4) In subsections (2) and (3), "legal practitioners" means—

(a) solicitors (including firms of solicitors) or incorporated practices,

(b) advocates,

(c) conveyancing or executry practitioners, or

(d) litigation practitioners.

Commencement Information

I1 S. 119 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

VALID FROM 01/06/2011

CHAPTER 2

FACULTY OF ADVOCATES

120 Regulation of the Faculty

(1) The Court of Session is responsible—

(a) for—

(i) admitting persons to (and removing persons from) the office of advocate,

(ii) prescribing the criteria and procedure for admission to (and removal from) the office of advocate,

(b) for regulating the professional practice, conduct and discipline of advocates.

(2) The Court's responsibilities within subsection (1)(a)(ii) and (b) are exercisable on its behalf, in accordance with such provision as it may make for the purpose, by—

(a) the Lord President, or

(b) the Faculty of Advocates.

121 Professional rules

(1) Subsections (2) and (3) apply to any rule which—

(a) prescribes the criteria or procedure for admission to (or removal from) the office of advocate, or

(b) regulates in respect of any matter the professional practice, conduct or discipline of advocates.

(2) If the rule is made by the Faculty, the rule—

(a) is of no effect unless it has been approved by the Lord President (and may not be revoked unless its revocation has been approved by the Lord President),

(b) must be published by the Faculty.

(3) In any other case, the rule—

(a) is of no effect unless the Faculty has been consulted on it (and may not be revoked unless the Faculty has been consulted on its revocation),

(b) requires—

(i) where made by the Lord President, to be published,

(ii) where made by the Court of Session, to be contained in an Act of Sederunt.

(4) Neither this section nor section 122 affects the validity of any rule—
- (a) that was in force immediately prior to the commencement of this section, and
- (b) which regulates in respect of any matter the professional practice, conduct or discipline of advocates.

(5) Nothing in Part 2 affects the operation of any rule which regulates in respect of any matter the professional practice, conduct or discipline of advocates (in particular, as it may relate to their involvement in or with licensed legal services providers).

122 Particular rules

(1) Subsection (2) applies to any rule—
- (a) which regulates in respect of any matter the professional practice, conduct or discipline of advocates, and
- (b) under which an advocate is prohibited from forming a legal relationship with another advocate, or any other person, for the purpose of their jointly offering professional services to the public.

(2) The rule is of no effect unless it has been approved by the Scottish Ministers after they have consulted the OFT.

(3) Subsection (2) is without prejudice to section 121(2) and (3).

(4) In section 31 (rules of conduct etc.) of the 1990 Act, subsection (1) is repealed.

CHAPTER 3

SOLICITORS AND OTHER REPRESENTATIVES

Removal of practising restrictions

VALID FROM 02/07/2012

123 Licensed providers as qualified persons

(1) In section 26 (offence for solicitors to act as agents for unqualified persons) of the 1980 Act, in subsection (3), after “does not include” insert “ a licensed legal services provider, ”.

(2) In section 30 (liability for fees of other solicitor) of the 1980 Act—
- (a) after “incorporated practice” in the second place where it occurs insert “ or a licensed legal services provider ”,
- (b) for “other solicitor or incorporated practice” substitute “ employed party ”,
- (c) for “other solicitor's or incorporated practice's” substitute “party's”.

(3) In section 31 (offence for unqualified persons to pretend to be solicitor or notary public) of the 1980 Act—
- (a) the unnumbered block of text (from “In” to “practice.”) between subsections (1) and (2) is repealed,

(b) after subsection (2) insert—

"(2A) This section does not apply to an incorporated practice.

(2B) This section does not apply in relation to the taking or using by a licensed legal services provider of a name, title, addition or description if the licensed provider has the Society's written authority for using it.

(2C) For the purpose of subsection (2B), the Council are to make rules which—

(a) set the procedure for getting the Society's authority (and specify the conditions that the Society may impose if it gives that authority),

(b) specify the grounds on which the Society may refuse to give that authority (and require the Society to give reasons in writing if it refuses to give that authority).".

(4) In section 32 (offence for unqualified persons to prepare certain documents) of the 1980 Act, after paragraph (e) of subsection (2) insert "; or

(ea) a licensed legal services provider;".

(5) In section 33 (unqualified persons not entitled to fees etc.) of the 1980 Act—

(a) the first unnumbered block of text (from "Subject" to "matter.") becomes subsection " (1) " and the second unnumbered block of text (from "This" to "cause.") becomes subsection " (2) ",

(b) in subsection (2) (as so numbered), after "incorporated practice" insert " or a licensed legal services provider ".

(6) In section 65(1) (interpretation) of the 1980 Act—

(a) after the entry for "the 2007 Act" insert—

""the 2010 Act" means the Legal Services (Scotland) Act 2010;",

(b) at the appropriate alphabetical place insert—

""licensed legal services provider" (or "licensed provider") is to be construed in accordance with Part 2 of the 2010 Act;".

(7) In section 17 (qualified conveyancers) of the 1990 Act, in subsection (23)—

(a) after paragraph (b) insert—

"(ba) a licensed legal services provider within the meaning of Part 2 of the Legal Services (Scotland) Act 2010;",

(b) after the subsequent "incorporated practice" insert " , licensed provider ".

VALID FROM 02/07/2012

124 Practice rules for licensed providers

(1) After section 33B of the 1980 Act insert—

"**33C Licensed legal services providers**

(1) Subsection (2) applies to any rule made under section 34 which prohibits or unduly restricts the—
  (a) involvement of solicitors in or with, or employment of solicitors by, licensed legal services providers,
  (b) provision of services by licensed providers, or
  (c) operation of licensed providers in other respects.

(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.".

(2) In addition—
  (a) in section 34 (rules as to professional practice, conduct and discipline) of the 1980 Act—
    (i) in subsection (1A)(f), for ", or incorporated practices which, are partners in or directors of multi-disciplinary practices" substitute " have an interest in or are employed by (or otherwise within) licensed legal services providers ",
    (ii) subsection (3A) is repealed,
  (b) in section 64A(1) of that Act, paragraph (b) and the word "; or" immediately preceding it are repealed,
  (c) in section 64B of that Act, the words "or such as is mentioned in section 34(3A)" are repealed,
  (d) in section 64D(6) of that Act, for "sections 25A(9) or (10) and 34(3A)" substitute " section 25A(9) or (10) ",
  (e) in section 65(1) of that Act—
    (i) the definition of "multi-disciplinary practice" is repealed,
    (ii) in the definition of "unqualified person", the words ", other than a multi-disciplinary practice," are repealed,
  (f) in section 17(23) of the 1990 Act—
    (i) paragraph (c) is repealed,
    (ii) the subsequent words ", multi-disciplinary practice" are repealed,
  (g) in paragraph 29(15) of Schedule 8 to that Act—
    (i) in head (c), the insertion (into section 65(1) of the 1980 Act) of the definition of "multi-disciplinary practice" is repealed,
    (ii) head (f) and the word "and" immediately preceding it are repealed.

(3) Subject to section 33C of the 1980 Act, nothing in Part 2 affects the operation of any rule which regulates in respect of any matter the professional practice, conduct or discipline of solicitors.

125 Citizens advice bodies

(1) In section 26 of the 1980 Act, in subsection (2), after "law centre" insert " or a citizens advice body ".

(2) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—

""citizens advice body" means an association which is formed (and operates) —

(a) otherwise than for the purpose of making a profit, and

(b) with the sole or primary objective of providing legal and other advice (including information) to the public for no fee, gain or reward;".

(3) The Scottish Ministers may by regulations modify the definition of "citizens advice body" in section 65(1) of the 1980 Act.

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

(a) the Lord President,

(b) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate.

Commencement Information

I2 S. 125 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

VALID FROM 01/09/2011

Lay representation

126 Court of Session rules

In the Court of Session Act 1988—

(a) in section 5 (power to regulate procedure), after paragraph (ee) insert—

"(ef) to permit a lay representative, when appearing at a hearing in any category of cause along with a party to the cause, to make oral submissions to the Court on the party's behalf.",

(b) after section 5 insert—

"**5A Rules for lay representation**

(1) Rules under section 5(ef)—

(a) are to apply to situations in which the party is not otherwise represented,

(b) may specify other conditions by reference to which the rules are to apply.

(2) Section 5(ef) is subject to any enactment under which special provision may be made for a party to a particular type of case before the Court to be represented by a lay representative.

(3) In section 5(ef) and this section, a "lay representative" is a person who is not—

(a) a solicitor,

(b) an advocate, or

(c) one having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.".

127 Sheriff court rules

In the Sheriff Courts (Scotland) Act 1971—

(a) in section 32 (power of Court of Session to regulate civil procedure), in subsection (1), after paragraph (m) insert—

"(n) permitting a lay representative, when appearing at a hearing in any category of civil proceedings along with a party to the proceedings, to make oral submissions to the sheriff on the party's behalf.",

(b) after section 32 insert—

"**32A Rules for lay representation**

(1) Rules under section 32(1)(n)—

(a) are to apply to situations in which the party is not otherwise represented,

(b) may specify other conditions by reference to which the rules are to apply.

(2) Section 32(1)(n)—

(a) does not restrict the operation of section 36(1),

(b) is subject to any enactment (apart from section 36(1)) under which special provision may be made for a party to a particular type of case before the Court to be represented by a lay representative.

(3) In section 32(1)(n) and this section, a "lay representative" is a person who is not—

(a) a solicitor,

(b) an advocate, or

(c) one having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.".

Guarantee Fund

128 Use of Guarantee Fund

(1) In section 43 (Guarantee Fund) of the 1980 Act—

(a) in subsection (2)—

(i) the word "or" immediately preceding paragraph (b) is repealed,

(ii) in paragraph (b), after "director" insert " , member ",

(iii) after paragraph (b) insert "; or

(c) any licensed legal services provider or person within it in connection with its provision of legal services (with the same meaning as for Part 2 of the 2010 Act), even if—

(i) the Society is not its approved regulator, or

(ii) subsequent to the act concerned it has ceased to operate.",

(b) in subsection (3)—

(i) in paragraph (cc), after "director" in the second place where it occurs insert " , member ",

(ii) after paragraph (cc) insert—

"(cd) to a licensed provider or any investor or person who owns, manages or controls or is within the licensed provider in respect of a loss suffered by it or any such person in connection with the licensed provider's provision of legal services by reason of dishonesty on the part of any such persons;",

(c) in subsection (7)(c), after "incorporated practice" insert " or a licensed provider ",

(d) after subsection (7) insert—

"(8) In the case of licensed providers, this section and Part I of Schedule 3 apply in relation to (and only to) such licensed providers as are regulated by an approved regulator that in furtherance of section 24(4) of the 2010 Act does not maintain its own compensation fund as referred to in that section.

(9) In this section and paragraph 1 of Schedule 3—

"approved regulator",

"investor",

are to be construed in accordance with Part 2 of the 2010 Act.".

(2) In section 43 of the 1980 Act—

(a) in subsection (2), after paragraph (a) insert—

"(aa) any conveyancing or executry practitioner or an employee of the practitioner in connection with the practitioner's practice as such, even if subsequent to the act concerned the practitioner has ceased to provide conveyancing or executry services;",

(b) in subsection (3), after paragraph (c) insert—

"(ca) to a conveyancing or executry practitioner in respect of a loss suffered by reason of dishonesty on the part of a partner or employee of the practitioner in connection with the practitioner's practice as such;".

(3) Section 21C of the 1990 Act is repealed, but—

(a) the fund maintained under subsection (1) of that section immediately before its repeal by this subsection continues to be vested in the Council, and

(b) the Council is to apply that fund to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).

Commencement Information

I3 S. 128(1)(a)(ii)(b)(i)(2)(3) in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

129 Contributions to the Fund

(1) In Schedule 3 (the Scottish Solicitors Guarantee Fund) to the 1980 Act, in paragraph 1—

(a) in sub-paragraph (2A)—

(i) the words "directors of incorporated practices" become head (a),

(ii) after "directors" (in that head), insert " or members ",

(iii) after that head (as so numbered) insert ", or

(b) investors in licensed legal services providers.",

(b) in sub-paragraph (2B)—

(i) the words from "by every" to the end become head (a),

(ii) in that head (as so numbered), for "scale of such" substitute " relevant scale of annual corporate ",

(iii) after that head (as so numbered) insert ", and

(b) by every licensed provider, in respect of each year during which or part of which it operates as such under the licence issued by its approved regulator, a contribution (also an "annual corporate contribution") in accordance with the relevant scale of annual corporate contributions referred to in sub-paragraph (3).",

(c) in sub-paragraph (3)—

(i) for "scale" in the first place where it occurs substitute " scales ",

(ii) the words from ", which scale" to the end are repealed,

(d) after sub-paragraph (3) insert—

"(3A) The scales of annual corporate contributions—

(a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—

(i) in the case of incorporated practices, the number of solicitors that they have as directors, members or employees,

(ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,

(b) may otherwise make different provision as between incorporated practices and licensed providers.",

(e) in sub-paragraph (4), after "incorporated practice" insert " or a licensed provider ",

(f) in sub-paragraph (5), after "incorporated practice" insert " and licensed provider ",

(g) in sub-paragraph (8), after "incorporated practice" insert " or a licensed provider ".

(2) In Schedule 3 to the 1980 Act, after paragraph 1B insert—

"1C (1) Paragraph 1 applies to a conveyancing or executry practitioner as it applies to a solicitor.

(2) But it does so with the following of its provisions to be disregarded—

(a) the reference in sub-paragraph (1) to an application for a practising certificate,

(b) sub-paragraphs (2), (2A), (6) and (9).

(3) If a conveyancing or executry practitioner fails to pay an annual contribution due by virtue of this paragraph, the Council may suspend (pending payment) the relevant entry in the register maintained by them under section 17(1) or 18(1) of the 1990 Act.

(4) For the purposes of section 43 and this paragraph, the references to a conveyancing or executry practitioner (or conveyancing or executry services) are to be construed in accordance with section 23 of the 1990 Act.".

(3) In Schedule 3 to the 1980 Act, in paragraph 3(2)—

(a) for "and incorporated practices" substitute " , incorporated practices and licensed providers ",

(b) for "or incorporated practice or practices" substitute " , incorporated practice or practices or licensed provider or providers ".

Commencement Information

I4 S. 129(1)(a)(i)(ii)(2) in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

130 Cap on individual claims

In Schedule 3 to the 1980 Act—

(a) in paragraph 4, after sub-paragraph (3) insert—

"(3A) The amount of an individual grant from the Guarantee Fund may not exceed £1.25 million.",

(b) after paragraph 4 insert—

"5 (1) The Scottish Ministers may by regulations amend the sum specified in paragraph 4(3A).

(2) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).

(3) The power to make regulations under sub-paragraph (1) is exercisable by statutory instrument; but a statutory instrument containing any such

regulations is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

Commencement Information
I5 S. 130 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

The Law Society

131 Acting as approved regulator

After section 1 of the 1980 Act insert—

“**1A Power to act as statutory regulator**

The Society may—
(a) act as an approved regulator within the meaning of Part 2 of the 2010 Act,
(b) do anything that is necessary or expedient for the purposes of doing so.”.

Commencement Information
I6 S. 131 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

VALID FROM 30/06/2011

132 Council membership

(1) In section 3 (establishment and functions of Council of Law Society) of the 1980 Act, in subsection (1), after “elected” insert “ , co-opted or appointed ”.

(2) In Schedule 1 to the 1980 Act—
(a) in paragraph 2 (the Council's scheme)—
(i) in head (a), the word “, election,” is repealed,
(ii) after head (a) insert—
“(aa) election, co-option and appointment to the Council;”,
(b) in paragraph 3 (detail of the scheme), after head (b) insert—
“(bza) shall make provision for—
(i) the election or co-option of solicitor members to the Council,
(ii) the appointment of non-solicitor members to the Council;”,
(c) after paragraph 3 insert—

“3A (1) This paragraph applies for the purpose of paragraph 3(bza).

(2) Persons are electable, or eligible to be co-opted, as solicitor members if they are members of the Society.

(3) Persons are appointable as non-solicitor members if they appear to the Council—

(a) to be qualified to represent the interests of the public in relation to the provision of legal services in Scotland, or

(b) having regard to the Society's functions, to be suitable in other respects.”.

133 Regulatory committee

(1) In section 3A (discharge of functions of Council of the Law Society) of the 1980 Act, in subsection (11), for “is” substitute “is—

(a) subject to sections 3B to 3G, and

(b)”.

(2) After section 3A of the 1980 Act insert—

“**3B Regulatory committee**

(1) The Council must, for the purpose mentioned in subsection (2)—

(a) arrange under section 3A(1)(a) for their regulatory functions to be exercised on their behalf by a regulatory committee, and

(b) ensure that the committee continues so to exercise those functions (in particular, for the discharge of the Council's responsibility as mentioned in section 3A(9)(a)).

(2) The purpose is of ensuring that the Council's regulatory functions are exercised—

(a) independently of any other person or interest,

(b) properly in other respects (in particular, with a view to achieving public confidence).

(3) Accordingly, the Council must not—

(a) exercise their regulatory functions through any other means, or

(b) interfere unduly in the regulatory committee's business.

(4) Subsection (3)(a) is subject to—

(a) any determination made by the regulatory committee in a particular case that it is necessary, for ensuring that something falling within the Council's regulatory functions is achieved appropriately, that specific action be taken otherwise than through the regulatory committee, and

(b) such directions as the regulatory committee gives the Council (acting in any other capacity) in connection with the determination.

3C Particular rules applying

(1) The following particular rules apply as respects the regulatory committee—

(a) the committee's membership may include persons who are not members of the Council,

(b) at least 50% of the committee's membership is to comprise lay persons,

(c) lay persons, where they are not members of the Council, are appointable to the committee if they would be appointable to the Council as non-solicitor members (see paragraph 3A(3) of Schedule 1),

(d) the committee is to appoint one of its lay members as its convener,

(e) if the convener is not present at a meeting of the committee, another of its lay members is to chair the meeting.

(2) Any sub-committee of the regulatory committee (formed under section 3A(2)(a)) is subject to the particular rules applying as respects the regulatory committee, except that—

(a) a meeting of the sub-committee need not be chaired by one of its lay members,

(b) it may co-opt members from outside the membership of the regulatory committee.

(3) Nothing done by the regulatory committee (or a sub-committee of it) is invalid solely because of a temporary shortfall in the number of its lay members.

(4) In subsection (1)(b), "lay persons" are persons who are not—

(a) solicitors,

(b) advocates,

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

(d) those having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act, or

(e) confirmation agents or will writers within the meaning of Part 3 of the 2010 Act.

3D Resolving regulatory disputes

(1) This section applies in relation to any dispute arising between the regulatory committee and the Council (acting in any other capacity) with respect to the application of section 3B.

(2) If the dispute cannot be settled by the parties, it is to be submitted to (and resolved by) arbitration.

(3) The arbitrator is to be appointed—

(a) jointly by the parties, or

(b) in the absence of agreement for joint appointment, by the Lord President on a request made by either (or both) of them.

(4) The arbitrator's resolution of the dispute is final and binding on the parties.

3E Further provision for section 3B etc.

(1) The Scottish Ministers may by regulations—

(a) prescribe a maximum—

(i) number of members that the regulatory committee, or any sub-committee of it, may have,

(ii) proportion of the membership (of either) that may comprise co-opted members,

(b) make further provision about the Council's regulatory functions if they believe that such provision is necessary for ensuring that those functions are exercised in accordance with the purpose stated in section 3B(2),

(c) modify (by elaboration or exception) the definition in sections 3F and 3G if they believe that such modification is appropriate.

(2) Before making regulations under subsection (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).

(3) The power to make regulations under subsection (1) is exercisable by statutory instrument; but—

(a) a statutory instrument containing regulations under subsection (1)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament,

(b) a statutory instrument containing regulations under subsection (1)(b) or (c) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

3F Meaning of "regulatory functions"

(1) For the purposes of sections 3B to 3E, the Council's "regulatory functions" are their functions of regulating in respect of any matter the professional practice, conduct and discipline of—

(a) solicitors (including firms of solicitors) and incorporated practices,

(b) other legal practitioners, for example—

(i) registered European or foreign lawyers,

(ii) conveyancing or executry practitioners.

(2) Those functions include (in particular) their functions as to—

(a) setting standards of qualification, education and training,

(b) admission of persons to the profession,

(c) keeping the roll and other registers,

(d) administering the Guarantee Fund,

(e) making regulatory rules under any relevant enactment.

(3) In subsection (1)(b)(ii), the reference to conveyancing or executry practitioners is to be construed in accordance with section 23 of the 1990 Act.

3G Extended meaning under section 3F

If the Society acts as an approved regulator as mentioned in section 1A, the Council's "regulatory functions" for the purposes of sections 3B to 3E also comprise such regulatory functions as—

(a) fall within the meaning of that expression as given for the purposes of Part 2 of the 2010 Act (by section 30(1) of that Act), and

(b) are exercisable under that Part of that Act by the Society in its capacity as an approved regulator as so mentioned.”.

(3) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—

““regulatory committee” means the regulatory committee formed in accordance with section 3B(1);”.

Commencement Information

I7 S. 133 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, **Sch.**

VALID FROM 01/05/2011

The 1980 Act: further modification

134 Keeping the solicitors roll etc.

(1) In section 7 (keeping the roll) of the 1980 Act, after subsection (2) insert—

“(2A) The roll is also to record against the name of each enrolled solicitor the address of the place of business of that solicitor (as given under subsection (2) of that section).”.

(2) In section 12A (keeping the register) of the 1980 Act, after subsection (2) insert—

“(2A) The register is also to record against the name of each lawyer entered on it the address of the place of business of that lawyer and related information (as given under section 12B(1)).”.

135 Removal from the roll etc.

(1) In section 9 (removal of name from roll on request) of the 1980 Act—

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

(b) in subsection (1) (as so numbered), the words from “on” to “hand,” are repealed,

(c) after subsection (1) (as so numbered) insert—

“(2) But the Council are required to remove the name or annotation only if they are satisfied that—

(a) the solicitor has made adequate arrangements with respect to the business which the solicitor then has in hand, and

(b) it is otherwise appropriate to do so.”.

(2) In section 12C (removal of name from register on request) of the 1980 Act—

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

(b) in subsection (1) (as so numbered), the words from “, on” to “hand,” are repealed,

(c) after subsection (1) (as so numbered) insert—

"(2) But the Council are required to remove the name or annotation only if they are satisfied that—

(a) the solicitor has made adequate arrangements with respect to the business which the solicitor then has in hand, and

(b) it is otherwise appropriate to do so.".

136 Restoration to the roll

(1) In section 10 (restoration of name to roll on request) of the 1980 Act—

(a) after subsection (1) insert—

"(1ZA) Where the restoration of a solicitor's name to the roll has been prohibited under section 53(2)(aa), the solicitor is entitled to have the solicitor's name restored to the roll if (but only if) the Tribunal so orders—

(a) on an application made to it by the solicitor, and

(b) after such enquiry as it thinks proper.",

(b) in subsection (1A), after "section 9" insert " (except where subsection (1ZA) applies) ",

(c) in subsection (2), after "subsection (1)" insert " or (1ZA) ".

(2) In section 53 (powers of Tribunal) of the 1980 Act, in subsection (2)—

(a) after paragraph (a) insert—

"(aa) if the solicitor's name has been removed from the roll under section 9, by order prohibit the restoration of the solicitor's name to the roll;",

(b) the word "or" where it occurs immediately after any of paragraphs (a) to (e) is repealed.

137 Suspension from practice

(1) In section 18 (suspension of practising certificates) of the 1980 Act—

(a) after subsection (1) insert—

"(1ZA) The Council may suspend from practice a solicitor who—

(a) has been convicted of an offence involving dishonesty, or

(b) in respect of an offence, has been—

(i) fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction), or

(ii) sentenced to imprisonment for a term of 12 months or more.",

(b) in subsection (2), after "subsection (1)" insert " or (1ZA) ".

(2) In section 19 (further provisions relating to suspension of practising certificates) of the 1980 Act—

(a) after subsection (5A) insert—

"(5B) A suspension from practice arising by virtue of section 18(1ZA) expires if the grounds for it no longer apply.

(5C) On the occurrence of any of the circumstances mentioned in subsections (4) to (5B), the solicitor concerned must notify the Council in writing (and without delay).",

(b) in subsection (6), after "section 18(1)" insert " or by virtue of section 18(1ZA) ".

(3) In section 24F (suspension of registration certificate) of the 1980 Act—

(a) after subsection (1) insert—

"(1A) The Council may suspend from practice a registered European lawyer who—

(a) has been convicted of an offence involving dishonesty, or

(b) in respect of an offence, has been—

(i) fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction), or

(ii) sentenced to imprisonment for a term of 12 months or more.",

(b) in subsection (2), after "subsection (1)" insert " or (1A) ".

(4) In section 24G (further provisions relating to suspension of registration certificate) of the 1980 Act—

(a) after subsection (4) insert—

"(4A) A suspension from practice arising by virtue of section 24F(1A) expires if the grounds for it no longer apply.

(4B) On the occurrence of any of the circumstances mentioned in subsections (2) to (4A), the lawyer concerned must notify the Council in writing (and without delay).",

(b) in subsection (5), after "section 24F(1)" insert " or by virtue of section 24F(1A) ".

138 Accounts rules fee

(1) After section 37 of the 1980 Act insert—

"**37A Accounts fee**

(1) An annual fee set in accordance with this section (the "accounts fee") is to be paid by each—

(a) solicitor who is required by paragraph 1 of Schedule 3 (as read with section 43(7)) to pay an annual contribution on behalf of the Guarantee Fund,

(b) incorporated practice that is required by that paragraph of that Schedule to pay an annual corporate contribution on that behalf.

(2) The accounts fee is also to be paid by each—

(a) registered European lawyer or registered foreign lawyer who is required by virtue of paragraph 1A or 1B of that Schedule to pay an annual contribution on that behalf,

(b) multi-national practice to which the accounts rules apply by virtue of an enactment.

(3) The accounts fee is to be set by the Council for the purpose of funding the exercise of their function of securing compliance (by the categories specified in subsections (1) and (2)) with the accounts rules.

(4) The accounts fee is to be—

(a) set—

(i) no later than 30 September each year in respect of the 12 month period beginning with 1 November that year, or

(ii) by reference to such other dates as the Council may fix,

(b) paid to the Council by such date as they may fix.

(5) The accounts fee may be set—

(a) so as to involve different amounts (including nil) for different—

(i) categories (as specified in subsections (1) and (2)),

(ii) circumstances (by reference to all relevant factors),

(b) in the case of incorporated practices, by particular reference to the number of solicitors that they have as directors, members or employees.

(6) The Council may take such steps as they consider necessary for recovering the accounts fee due in accordance with this section.".

(2) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—

""accounts fee" has the meaning given by section 37A(1);".

139 Powers of Tribunal

(1) In section 53 (powers of Tribunal) of the 1980 Act—

(a) in subsection (1)(b), for "sentenced to a term of imprisonment of not less than 2 years" substitute " fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more ",

(b) in subsection (2), after paragraph (bb) insert—

"(bc) where—

(i) an incorporated practice has been convicted, or has been found to have failed, as referred to in subsection (1)(c) or (d), and

(ii) the Tribunal consider that the complainer has been directly affected by any misconduct by the practice to which the conviction or failure is (to any extent) attributable,

direct the practice to pay to the complainer compensation (for loss, inconvenience or distress resulting from the misconduct) of such amount not exceeding £5,000 as the Tribunal may specify;",

(c) in subsection (3A), for "subsection (2)(c), (d) and (e)" substitute " subsection (2)(bb) to (e) ",

(d) in subsection (7C), after "paragraph (bb)" insert " or (bc) ",

(e) in subsection (9), after "subsection (2)(bb)" insert " and (bc) ".

(2) In section 54 (appeals from decisions of Tribunal) of the 1980 Act, in subsections (1C), (1D) and (1E), after "section 53(2)(bb)" in each place where it occurs insert " or (bc) ".

CHAPTER 4

OTHER BODIES

Scottish Legal Aid Board

VALID FROM 01/05/2011

140 Exclusion from giving legal assistance

In section 31 (solicitors and counsel) of the 1986 Act—

(a) in subsections (3), (4) and (5), for "relevant body" wherever appearing substitute " Board ",

(b) subsections (6) and (10) are repealed.

141 Availability of legal services

In the 1986 Act—

(a) in section 1 (the Scottish Legal Aid Board), after subsection (2) insert—

"(2A) The Board also has the general function of monitoring the availability and accessibility of legal services in Scotland (including by reference to any relevant factor relating particularly to rural or urban areas).",

(b) in section 2 (powers of the Board), after subsection (2)(d) insert—

"(da) to give the Scottish Ministers such advice as it may consider appropriate in relation to the availability and accessibility of legal services in Scotland;",

(c) in section 3 (duties of the Board), after subsection (2) insert—

"(2A) The Board is, from time to time, to give the Scottish Ministers such information as they may require relating to the availability and accessibility of legal services in Scotland.".

Commencement Information

I8 S. 141 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

142 Information about legal services

After section 35A of the 1986 Act insert—

"**35AA Information about legal services**

(1) For the purpose mentioned in subsection (4)(a), each of the bodies mentioned in subsection (3)(a), (b) and (c) must provide the Board with such information as the Board may reasonably require.

(2) For the purpose mentioned in subsection (4)(b)—

(a) each of the bodies mentioned in subsection (3)(a) and (b) must—

(i) inform the Board whenever it upholds a conduct complaint about a solicitor or (as the case may be) an advocate, and

(ii) give the Board a summary of the relevant facts,

(b) the body mentioned in subsection (3)(d) must—

(i) inform the Board whenever it upholds a services complaint about a solicitor or an advocate, and

(ii) give the Board a summary of the relevant facts.

(3) The bodies are—

(a) the Law Society,

(b) the Faculty of Advocates,

(c) the Scottish Court Service,

(d) the Scottish Legal Complaints Commission.

(4) The purposes are the Board's exercise of its functions under—

(a) section 1(2A),

(b) section 31(3).

(5) In subsection (2), a reference to a services or a conduct complaint is to be construed in accordance with Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007.".

Commencement Information

I9 S. 142 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

Scottish Legal Complaints Commission

143 Relevant practitioners

In section 46(1) (interpretation of Part 1) of the 2007 Act—

(a) in the definition of "inadequate professional services", after paragraph (a)(v) insert—

"(vi) a registered European or foreign lawyer, professional services that are in any respect not of the quality which could reasonably be expected of a competent lawyer of that type;",

(b) in the definition of "practitioner", after paragraph (g) insert—

"(h) a registered European or foreign lawyer, whether or not registered at that time and notwithstanding that subsequent to

that time the lawyer's registration has ceased to have effect or the lawyer has stopped practising;",

(c) after the definition of "practitioner" insert—

""registered European or foreign lawyer" is to be construed in accordance with section 65(1) of the 1980 Act;",

(d) in the definition of "relevant professional organisation", after paragraph (d) insert—

"(e) a registered European or foreign lawyer, the Council;",

(e) in the definition of "unsatisfactory professional conduct", after paragraph (d) insert—

"(e) a registered European or foreign lawyer, conduct that is not of the standard which could reasonably be expected of a competent and reputable lawyer of that type;".

Commencement Information
I10 S. 143 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

144 Minor amendments

In the 2007 Act—

(a) in section 29—

(i) in subsection (4), after "members" insert " , and the Scottish Ministers, ",

(ii) in subsection (9), for "subsection (1)" substitute " subsection (8) ",

(b) in section 46(1), in paragraph (c) in the definition of "unsatisfactory professional conduct", for "section 27 of this Act" substitute " section 27 of the 1990 Act ",

(c) in paragraph 13(2)(a) of schedule 1—

(i) for "the function of deciding" substitute " a decision ",

(ii) for "whether" substitute " that ",

(iii) for "exercised" substitute " taken ",

(d) in paragraph 1(h)(iii) of schedule 3 for "whether" substitute " that ".

Commencement Information
I11 S. 144 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

145 The 2007 Act: further provision

(1) In section 78 (ancillary provision) of the 2007 Act, after subsection (1) insert—

"(1A) The Scottish Ministers may make such further provision as, having regard to the effect of the Legal Services Act 2007 so far as concerning the subject matter of Parts 1 and 2 of this Act (and applying in Scotland), they consider necessary or expedient in connection with this Act or any related provisions of the 1980 Act.".

(2) In section 79 (regulations or orders) of the 2007 Act, in subsection (3)(c)(i), after "section 78(1)" insert " or (1A) ".

Commencement Information

I12 S. 145 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

Status:
Point in time view as at 01/04/2011. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Part 4.