

REGULATORY FUNCTIONS OF THE LORD PRESIDENT AND THE COURT OF SESSION

STATUTE	PROVISION	POWER CONFERRED UPON THE LORD PRESIDENT/ COURT OF SESSION
Solicitors (Scotland) Act 1980	s.5	<p>5 Training regulations</p> <p>(1)The Council may, with the concurrence of the Lord President, make regulations for –</p> <ul style="list-style-type: none"> (a)practical training; (b)attendance at a course of legal education; (c)the passing of examinations. <p>(2)Regulations under this section –</p> <ul style="list-style-type: none"> (a)may make such incidental, consequential and supplemental provisions as the Council consider necessary or proper in relation to the matters specified in subsection (1); (b)may include provision for the charging by the Council of fees and the application thereof; and (c)may make different provision for different circumstances.
	s.25A(8) read with	<p>25A Rights of audience in the Court of Session, the Supreme Court, the Judicial Committee of the Privy Council and the High Court of Justiciary</p>

	s.34(3)(see below)	(8)Subject to subsections (9) and (10), the provisions of section 34(2) and (3) apply to rules made under this section as they apply to rules made under that section and, in considering any rules made by the Council under subsection (5), the Lord President shall have regard to the desirability of there being common principles applying in relation to the exercising of rights of audience by all practitioners appearing before the Court of Session and the High Court of Justiciary.
	s.25A(14)	<p>25A Rights of audience in the Court of Session, the Supreme Court, the Judicial Committee of the Privy Council and the High Court of Justiciary.</p> <p>(14)Where a complaint has been made that a solicitor has been guilty of professional misconduct in the exercise of any right of audience held by him by virtue of this section, the Council may, or if so requested by the Lord President shall, suspend him from exercising that right pending determination of that complaint under Part IV.</p>
	s.34(3)	<p>34 Rules as to professional practice, conduct and discipline.</p> <p>(3)Rules made under this section or section 35 shall not have effect unless the Lord President after considering any objections he thinks relevant has approved the rules so made.</p>
	s.44(1)	<p>44 Professional indemnity.</p> <p>(1)The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors and incorporated practices against any class of professional liability, and the rules may for the purpose of providing such indemnity do all or any of the following things, namely –</p>

		<p>(a)authorise or require the Society to establish and maintain a fund or funds;</p> <p>(b)authorise or require the Society to take out and maintain insurance with an authorised insurer;</p> <p>(c)require solicitors or any specified class of solicitors and incorporated practices or any specified class thereof to take out and maintain insurance with [an authorised insurer.</p>
	s.52	<p>52 Procedure on complaints and appeals to Tribunal</p> <p>(1)Part II of Schedule 4, shall have effect in relation to the procedure and powers of the Tribunal in relation to any complaint or appeal concerning a solicitor or an incorporated practice.</p> <p>(2)Subject to the other provisions of this Part , the provisions of sections 16 to 23 of the 1990 Act], and of any rules of court made under this Act, the Tribunal, with the concurrence of the Lord President, may make rules –</p> <p>(a)for regulating the making, hearing and determining of complaints made to it under this Act; and</p> <p>(aa)for regulating the making, hearing and determining of appeals made to it under section 42ZA(9), (10), (11) or (12), 42ZD(1)] or 53D(1);</p> <p>(ab)for regulating the making, hearing and determining of –</p> <p>(i)inquiries under subsection (2A) of section 20 of the 1990 Act; and</p> <p>(ii)appeals under subsection (8A)(b), (11)(b) or (11ZC)] of that section.</p> <p>(iii)appeals under section 20ZB(9), (10), (11) or (12) or 20ZE(1) of that Act;]]</p>

		(b) generally as to the procedure of the Tribunal (including provision for hearings taking place in public or wholly or partly in private).
	s.59A(3)	<p>59A Rules regarding notaries public</p> <p>(3) Rules made under this section shall not have effect unless the Lord President, after considering any representations the Lord President thinks relevant, has approved the rules so made.</p>
	Schedule 4 para 1A(a)&(b))	<p><i>Constitution, Procedure and Powers of Tribunal</i></p> <p>1A The Tribunal shall consist of equal numbers of—</p> <p>(a) members (in this Part referred to as “solicitor members”) appointed by the Lord President, who are solicitors recommended by the Council as representatives of the solicitors’ profession throughout Scotland; and</p> <p>(b) members (in this Part referred to as “non-lawyer members”) appointed by the Lord President after consultation with the Scottish Ministers, who are not—</p> <p>(i) solicitors;</p> <p>(ii) advocates;</p> <p>(iii) conveyancing practitioners or executry practitioners, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (“the 1990 Act”);</p>

		(iv) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.
	Schedule 4, para 3	<i>Constitution, Procedure and Powers of Tribunal</i> 3 The Lord President may from time to time terminate the appointment of any member of the Tribunal, and may fill any vacancy therein by the appointment of a solicitor recommended by the Council or, as the case may be, after consultation with the Secretary of State, by the appointment of a non-lawyer member.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1990	s.17(11A)	17 Conveyancing practitioners (11A) Rules made under subsection (11) above shall not have effect unless they have been approved by— (a) the Lord President of the Court of Session; and (b) subject to section 40 of this Act, the Scottish Ministers.
	s. 18(10A)	18 Executry practitioners (10A) Rules made under subsection (10) above shall not have effect unless they have been approved by— (a) the Lord President of the Court of Session; and (b) subject to section 40 of this Act, the Scottish Ministers.
	s.25(1)	25 Rights to conduct litigation and rights of audience.

		<p>(1) Any professional or other body may, for the purpose of enabling any of their members who is a natural person to acquire—</p> <ul style="list-style-type: none"> (a) rights to conduct litigation on behalf of members of the public; and (b) rights of audience, <p>make an application in that regard to the Lord President and the Secretary of State.</p>
	s.26	<p>26 Consideration of applications made under section 25.</p> <p>(1) The Lord President shall consider the provision made in any draft scheme submitted to him under section 25(1) of this Act in relation to the matters mentioned in section 25(2); and the Secretary of State shall, subject to subsection (5) below and to section 40 of this Act, consider the provision so made in section 25(2)(b) and (c).</p> <p>(2) In considering the code of practice included in the draft scheme by virtue of section 25(2)(b)(ii), the Lord President shall 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.</p> <p>(3) The Lord President and the Secretary of State shall—</p> <ul style="list-style-type: none"> (a) consult each other in considering a draft scheme submitted to them under section 25(1); and (b) consider any written representations timeously made to them under Schedule 2 to this Act,

		<p>and may, either jointly or severally, make preliminary observations to the body concerned in relation to that draft; and the body may make such adjustments to the draft as appear to them to be appropriate, and the Lord President and the Secretary of State (who shall, in accordance with section 40, consult the CMA in respect of any adjustments made in relation to the matters mentioned in section 25(2)(b) or (c)) shall thereafter consider the draft scheme as so adjusted.</p> <p>(4) In considering a draft scheme under subsection (1) or (3) above, the Lord President and the Secretary of State shall have regard to whether the provisions of the draft scheme are such as—</p> <ul style="list-style-type: none">(a) to achieve; and(b) to ensure the maintenance of, appropriate standards of conduct and practice by persons who may acquire rights to conduct litigation or rights of audience in the event of the draft scheme being approved. <p>(5) In relation to any code of practice such as is mentioned in section 25(2)(b)(ii), the duty of the Secretary of State under subsection (1) above is limited to a consideration of any provision of such a code as would, in his view, directly or indirectly inhibit the freedom of a member of the body concerned 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 scheme with respect to the matters mentioned in section 25(2)(a).</p> <p>(6) After they have considered a draft scheme under subsections (1) and (3) above, if the Lord President and the Secretary of State—</p>
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		<p>(a)are satisfied with the draft scheme, the Lord President shall grant the application, and shall so inform the body;</p> <p>(b)are not satisfied with the scheme, the Lord President shall refuse the application, and shall so inform the body, giving written reasons for the refusal, and the Lord President shall send a copy of the letter granting or refusing the application to any person who has made representations in relation to the draft scheme under Schedule 2 to this Act.</p> <p>(7) Where the Lord President has granted an application under subsection (6)(a) above, in relation to—</p> <p>(a)civil proceedings, the Court of Session may by act of sederunt; and</p> <p>(b)criminal proceedings, the High Court of Justiciary may by act of adjournal, make such provision for giving effect to the scheme as appears to it to be appropriate.</p>
<p>Legal Profession and Legal Aid (Scotland) Act 2007</p>	<p>Schedule 1 para 2(2));</p>	<p><i>Membership of the Commission</i></p> <p>2(1)The Commission is to consist of the following members—</p> <p>(a)a person to chair the Commission (“the chairing member”); and</p> <p>(b) other members.</p> <p>(2)Members are appointed by the Scottish Ministers, having consulted the Lord President of the Court of Session (“the Lord President”).</p>

	Schedule 1 para 5(2) and (3)	<p><i>Membership of the Commission</i></p> <p>5 (2) The chairing member may not remove a member from office without the agreement of the Lord President of the Court of Session.</p> <p>(3)The Lord President may, by written notice, remove the chairing member from office if the Lord President is satisfied as regards any of the matters mentioned in sub-paragraph (1)(a) or (b).</p>
Legal Services (Scotland) Act 2010	s.8(1)	<p>8 Pre-approval consideration</p> <p>(1)Before deciding whether or not to approve the applicant as an approved regulator under section 7, the Scottish Ministers must consult—</p> <p>(a)the Lord President,</p> <p>(b)the CMA, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,</p> <p>(c) such other person or body as they consider appropriate.</p>
	s.9	<p>9 Lord President's agreement</p> <p>(1)Despite section 7(1), the Scottish Ministers must not approve the applicant as an approved regulator unless the Lord President agrees to its being approved as such.</p> <p>(2)The Scottish Ministers are to impose under section 7(2) such particular conditions relating to the expertise mentioned in section 7(1)(a)(i) as are reasonably sought by the Lord President when (and if) notifying them of the Lord President's agreement for the purpose of subsection (1).</p>

		<p>(3)The Lord President's agreement is required for—</p> <p>(a)the imposition of any—</p> <p>(i)conditions under section 7(2) (apart from conditions to which subsection (2) relates),</p> <p>(ii)restrictions under section 7(3),</p> <p>(b) the variation of any such conditions or restrictions under section 7(4).</p>
	s.12(4)(b)(i)	<p>12 Regulatory schemes</p> <p>(4) An approved regulator may amend its regulatory scheme (or any aspect of it), but—</p> <p>(a)any material amendment is invalid unless it has the prior approval of the Scottish Ministers,</p> <p>(b)the Scottish Ministers may not give their approval without—</p> <p>(i)the Lord President's agreement, and</p> <p>(ii) consulting such other person or body as they consider appropriate.</p>
	s.29	<p>29 More about governance</p> <p>(1)The Scottish Ministers may by regulations make further provision about the internal governance arrangements of approved regulators.</p> <p>(2)However, regulations under subsection (1) must relate to the regulatory functions of approved regulators.</p>

		<p>(3) Before making regulations under subsection (1), the Scottish Ministers must—</p> <ul style="list-style-type: none"> (a) have the Lord President's agreement, and (b) consult any approved regulator that would be affected by the regulations. <p>(4) For the purposes of this Part, the internal governance arrangements of an approved regulator are its own organisational and operational arrangements for the carrying out of its activities.</p>
	s.38	<p>38 Measures open to Ministers</p> <p>(1) The Scottish Ministers may, in relation to an approved regulator, take one or more of the measures mentioned in subsection (4) if they consider that to be appropriate in the circumstances of the case.</p> <p>(2) When considering the appropriateness of taking any of those measures, or a combination of them, the Scottish Ministers must (except in the case of a measure mentioned in paragraph (f) of that subsection) have particular regard to the effect that it may have on the approved regulator's observance of the regulatory objectives.</p> <p>(3) Schedules 1 to 6 (to which subsection (1) is subject) respectively make provision concerning the measures mentioned in subsection (4).</p> <p>(4) The measures are—</p> <ul style="list-style-type: none"> (a) setting performance targets, (b) directing that action be taken,

		<p>(c) publishing a statement of censure,</p> <p>(d) imposing a financial penalty,</p> <p>(e) amending an authorisation given under section 10,</p> <p>(f) rescinding an authorisation given under that section.</p> <p>(5) The rescission of an authorisation by virtue of subsection (4)(f) has the effect of terminating the associated approval (of the approved regulator) given under section 7, except where it is stated under paragraph 5(3)(b) of schedule 6 that the approval is preserved.</p> <p>(6) The Lord President's agreement is required for the taking of any of the measures mentioned in subsection (4) except paragraph (d).</p> <p>(7) The Scottish Ministers may by regulations—</p> <p>(a) specify other measures that may be taken by them,</p> <p>(b) make further provision about the measures that they may take (including for the procedures to be followed),</p> <p>in relation to approved regulators.</p> <p>(8) Before making regulations under subsection (7), the Scottish Ministers must—</p> <p>(a) have the Lord President's agreement, and</p>
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		(b) consult every approved regulator.
	s.44	<p>44 Step-in by Ministers</p> <p>(1)The Scottish Ministers may by regulations make provision which establishes a body with a view to its becoming an approved regulator.</p> <p>(2)The Scottish Ministers may by regulations make provision which allows them to act as an approved regulator in such circumstances as the regulations may prescribe.</p> <p>(3)Regulations under subsection (2) may provide for this Part to apply with or subject to such modifications as the regulations may specify.</p> <p>(4)No regulations are to be made under subsection (1) or (2)—</p> <p style="padding-left: 40px;">(a)without the Lord President's agreement, and</p> <p style="padding-left: 40px;">(b) unless the Scottish Ministers believe that their intervention under this section is necessary, as a last resort, in order to ensure that the provision of legal services by licensed providers is regulated effectively.</p>
	s.45	<p>45Additional powers and duties</p> <p>(1)The Scottish Ministers may by regulations make provision conferring on approved regulators such additional functions as they consider appropriate for the purposes of this Part.</p> <p>(2)Before making regulations under subsection (1), the Scottish Ministers must—</p>

		<p>(a) have the Lord President's agreement, and</p> <p>(b) consult—</p> <p>(i) every approved regulator,</p> <p>(ii) such other person or body as they consider appropriate.</p>
	s.49	<p>49 Majority ownership</p> <p>(1) An entity is eligible to be a licensed provider only if the qualifying investors in it (taken together) have at least a 51% stake in the total ownership or control of the entity.</p> <p>(2) For the purpose of subsection (1), a “qualifying investor” is—</p> <p style="padding-left: 40px;">(a) a solicitor investor, or</p> <p style="padding-left: 40px;">(b) an investor who is a member of another regulated profession.</p> <p>(3) In subsection (2)(b), a “regulated profession” is a profession the professional activities of whose members (and qualifications for membership of which) are, under statutory or administrative arrangements, regulated by a professional association.</p> <p>(4) Despite the generality of subsections (2)(b) and (3), the Scottish Ministers—</p> <p style="padding-left: 40px;">(a) are by regulations to specify in connection with those subsections what is, or is not, to be regarded as a regulated profession,</p>

		<p>(b) may by regulations specify in connection with those subsections what is, or is not, to be regarded as a professional association, professional activities (or qualifications) or membership of a profession.</p> <p>(5) Before making regulations under subsection (4), the Scottish Ministers must—</p> <p>(a) have the Lord President's agreement, and</p> <p>(b) consult—</p> <p>(i) the Law Society,</p> <p>(ii) every approved regulator,</p> <p>(iii) the CMA, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,</p> <p>(iv) such other person or body as they consider appropriate.</p>
	s.51(9) and (10)	<p>51 Head of Legal Services</p> <p>(9) The Scottish Ministers may by regulations—</p> <p>(a) make further provision about—</p> <p>(i) Heads of Legal Services,</p> <p>(ii) the functions of such Heads (in their capacity as such),</p>

		<p>(b) modify subsection (2) so as to specify an additional type of legally qualified person (as an alternative to a solicitor as mentioned there).</p> <p>(10) Before making regulations under subsection (9), the Scottish Ministers must consult the Lord President.</p>
	s.120(1) and (2)	<p>120 Regulation of the Faculty</p> <p>(1) The Court of Session is responsible—</p> <p>(a) for—</p> <p>(i) admitting persons to (and removing persons from) the office of advocate,</p> <p>(ii) prescribing the criteria and procedure for admission to (and removal from) the office of advocate,</p> <p>(b) for regulating the professional practice, conduct and discipline of advocates.</p> <p>(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—</p> <p>(a) the Lord President, or</p> <p>(b) the Faculty of Advocates.</p>
	s.121	<p>121 Professional rules</p>

		<p>(1) Subsections (2) and (3) apply to any rule which—</p> <ul style="list-style-type: none">(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. <p>(2) If the rule is made by the Faculty, the rule—</p> <ul style="list-style-type: none">(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. <p>(3) In any other case, the rule—</p> <ul style="list-style-type: none">(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—<ul style="list-style-type: none">(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. <p>(4) Neither this section nor section 122 affects the validity of any rule—</p>
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		<p>(a) that was in force immediately prior to the commencement of this section, and</p> <p>(b) which regulates in respect of any matter the professional practice, conduct or discipline of advocates.</p> <p>(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).</p>
Faculty of Advocates Disciplinary Rules 2015	Para.77	<p>77. Subject to paragraph (e) below, the Disciplinary Tribunal in a particular case shall consist of a Chairman and five other persons appointed by the Dean as follows –</p> <p>a. The Chairman, who shall be one of a panel of three each of whom shall be a retired member of the Judicial Committee of the House of Lords or Justice of the UK Supreme Court, or a retired Senator of the College of Justice or other appropriate person, and shall be appointed by the Lord President of the Court of Session for a period of three years and, in relation to a complaint remitted to the Disciplinary Tribunal within that period, for such further period as may be necessary to achieve a final disposal in terms of these rules.</p> <p>b. Two counsel (including at least one senior counsel) shall be selected by the Chairman from a panel of ten counsel (including at least six senior counsel) approved by the Faculty for the purpose;</p> <p>c. Three lay persons shall be selected by the Chairman from the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures.</p>