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

## **Delegated powers in the Regulation of Legal Services (Scotland) Bill at Stage 1**



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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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# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Colin Smyth**  
Scottish Labour

# Membership changes

1. The following changes to Committee membership occurred during the course of the Committee's scrutiny of the delegated powers provisions in the Regulation of Legal Services (Scotland) Bill:
  - on 16 November 2023, Colin Smyth MSP replaced Mercedes Villalba MSP.

# Introduction

2. At its meetings on [12 September](#), [24 October](#), [7 November 2023](#)<sup>i</sup>, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Regulation of Legal Services \(Scotland\) Bill](#) ("the Bill") at Stage 1. On [14](#)<sup>ii</sup> and [21 November](#)<sup>iii</sup>, the Committee also considered its draft report.
3. The Committee considered the delegated powers in the Bill under its remit in Rule 6.11 of Standing Orders.
4. The Committee submits this report to the lead Committee for the Bill, the [Equalities, Human Rights and Civil Justice Committee](#), under Rule 9.6.2 of Standing Orders.

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<sup>i</sup> Apologies were received from Mercedes Villalba for the meetings on 24 October and 7 November 2023.

<sup>ii</sup> Rhoda Grant MSP substituted for Mercedes Villalba MSP at the meeting on 14 November 2023.

<sup>iii</sup> Maurice Golden MSP substituted for Jeremy Balfour MSP at the meeting on 21 November 2023.

# Overview of the Bill

5. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP, on 20 April 2023. The lead committee is the Equalities, Human Rights and Civil Justice Committee.
6. In 2017 the Scottish Government commissioned an independent review of the regulation of legal services, chaired by Esther Robertson. The Robertson review published its conclusions and forty recommendations in a report titled 'Fit for the Future' in 2018. The Scottish Government consulted on the report's recommendations and published its consultation analysis in 2022. In the light of the consultation responses, the Bill implements some of the Robertson review's recommendations and reforms the regulation of legal professionals and businesses. It also makes changes to how complaints about legal services are handled, with the aim of making the process simpler, faster, and more responsive.
7. The accompanying [Policy Memorandum](#), at paragraph 5, states that "the overarching policy objective of this Bill is to provide a modern, forward-looking legal services regulation framework for Scotland that will best promote competition, innovation, and the public and consumer interest in an efficient, effective, and independent legal sector." Further, at paragraph 6, that the Bill "introduces a number of measures designed to promote competition and innovation in the legal sector while improving the transparency and accountability of legal services regulation and the legal complaints system in Scotland."
8. The Bill provides overarching objectives and professional principles for regulation of the legal profession. It retains the existing regulatory bodies which are the Law Society of Scotland ("the Law Society"), the Faculty of Advocates ("the Faculty") and the Association of Commercial Attorneys ("the ACA") and makes provision for the possibility of new regulatory bodies in future. The existing bodies continue to have responsibilities for legal education, entry to the profession, for setting standards and to investigate and impose sanctions for misconduct. The Bill creates two categories of regulator and assigns specific responsibilities to each.
9. The Bill provides, in addition to its existing role in regulating individuals, for the Law Society to authorise and regulate businesses to provide legal services ("entity regulation") and extends the range of organisations which may employ solicitors. The Bill creates new offences designed to protect the title of 'lawyer,' 'regulated legal services provider' and 'member of the Faculty of Advocates' ("title regulation").
10. The Scottish Legal Complaints Commission ("the SLCC") is a non-departmental public body, with a Board appointed by Scottish Ministers (in consultation with the Lord President). The SLCC operates independently of the government, and the Scottish Ministers have no powers to intervene in operational or adjudicative matters. The SLCC was established under the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act") which provides the framework for dealing with complaints against legal services practitioners. The SLCC provides a single gateway for complaints about legal services and investigates and resolves complaints about inadequate legal services and refers any complaint about professional conduct to the relevant regulatory body.



11. The Bill renames the SLCC the Scottish Legal Services Commission ("the SLSC") and extends its remit to investigate complaints about legal businesses as well as individuals, and to monitor complaints about unregulated legal services. At present, where a complaint raises issues of both service quality and professional conduct, the relevant regulatory body deals with the complaint, and only in relation to professional conduct. The Bill enables the SLSC to investigate service quality in any complaint where this arises. It will have a role in overseeing how legal businesses and the regulators handle complaints made to them and will set minimum standards for complaints handling. Sanctions for complaints upheld by the SLSC or a regulator are strengthened. Appeals against any determination of the SLSC will now be made to a Review Committee of the SLSC as opposed to the Court of Session with recourse to judicial review in certain circumstances.

## Committee activity

12. In light of the serious concerns of some stakeholders responding to the lead committee's call for views, this Committee agreed to take oral evidence on the delegated powers provisions in the Bill. On [24 October](#) it took evidence from Esther Robertson, as well as the Law Society and the Faculty of Advocates. It heard from the Minister in Charge of the Bill, the Minister for Victims and Community Safety, Siobhian Brown MSP, on [7 November](#).
13. 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', seeking 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 on [17 November](#).
14. The Minister also wrote to the lead committee on [27 September](#) and [27 October](#), as well as to this Committee on [16 November](#), outlining plans to amend certain sections of the Bill, including those with delegated powers of interest to this Committee. While these provided information on issues the Scottish Government was exploring, considering, and its intentions in a number of areas, definite and detailed proposals were not provided in these letters, or in the oral evidence the Minister provided to the Committee.
15. Furthermore, specifically in relation to 'consent requirements', in her [letter to this Committee](#), the Minister for Victims and Community Safety stated the Scottish Government was:
  - 15.1 *“considering amendments which will provide additional safeguards in the form of requiring the Lord President's consent where certain delegated powers are exercised by Ministers and provide a more consistent approval role for the Lord President throughout the Bill. By way of example, the Lord President's consent would be required for any amendment to the regulatory objectives or professional principles at section 5(1), any additions to the regulatory scheme requirements at section 26(1) or any change to the rules for authorised legal businesses at section 41(2).”*
16. In her oral evidence to the Committee, the Minister said of such a mechanism *“That power acts as a veto against any new measures being introduced”*.
17. However, responding to this Committee's letter, the Lord President stated:

” *“it is important to stress that the inclusion of such a consent mechanism needs to be carefully considered. The scope of each delegated power, and what it permits Ministers to do, must be looked at in order to assess whether a consent mechanism would act as a sufficient safeguard in those circumstances. Consideration must also be given to how this mechanism would operate. For example, how will the Lord President obtain the necessary information on which to base a decision to withhold consent?”*

*“... there are many examples on the statute book where the Lord President's approval is needed before Ministers may bring forward subordinate legislation. There are many examples where the Lord President possesses direct powers, and many permutations in between. However, if the Lord President was ever to withhold consent, whilst that should provide a strong indicator to the Government that any proposed Ministerial action is not felt to be appropriate, such a mechanism is not a veto. There would be a risk that future governments could seek a judicial review of a decision of the Lord President to withhold consent, if it felt strongly, for political reasons, that it needed to take action.”*

18. And specifically in relation to the proposed consent mechanism in relation to section 5(1) discussed below, he stated that it *“risks politicising the office of Lord President, whether consent were given or withheld”*.<sup>iv</sup>
19. More generally, the Committee notes that the Scottish Government is intending to bring forward amendments to address a number of concerns raised by stakeholders during Stage 1 consideration of the Bill. The Committee welcomes the fact that the Scottish Government is willing to respond to these concerns. However, the Committee has found it challenging to meaningfully report on a number of delegated powers in the Bill given that it is aware the powers are likely to change, but it does not have information on exactly how they might change, or have full access to stakeholder views on those changes.
20. The Committee is concerned that the level of engagement with key stakeholders prior to the Bill being introduced, in particular in relation to delegated powers, appears to have been inadequate, and leaves the Committee with questions about the process followed. Discussion on the central provisions of the Bill should have been resolved at an earlier stage, and have advanced further, which, it considers, would have enabled more effective parliamentary scrutiny.

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iv Lord President of the Court of Session, [written response to the Committee](#), 17 November 2023.

# Delegated powers

21. The Bill confers 21 powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared [a Delegated Powers Memorandum \(“DPM”\)](#) which sets out the reason for taking each delegated power in the Bill and the parliamentary scrutiny procedures that have been chosen.

22. The Committee took oral evidence in relation to the delegated powers in the following sections:

Section 5(1) - power to modify regulatory objectives and professional principles

Section 8(5) - Regulatory categories

Section 20(6) - Measures open to Scottish Ministers

Section 35 - Replacement regulatory arrangements for authorised providers

Section 41(2) & (6) – Rules for authorised legal business

Section 46(3) – Reconciling different rules

Section 49(1) - Powers of the Scottish Ministers to intervene

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

Schedule 2, Paragraph 23: Making changes to regulatory functions

Under these sections below, a summary of the evidence heard is given before the Committee view. On remaining delegated powers, the Committee commentary is based on written information available, such as in the DPM, and in one case, a written submission from the Law Society.

# Review of relevant powers

## Section 5(1) - power to modify regulatory objectives and professional principles

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

### *Provision*

23. Section 5 provides that the Scottish Ministers may modify the regulatory objectives and professional principles for legal services set out in sections 2 to 4 of the Bill.
24. Before making such regulations, the Scottish Ministers must consult the Lord President, the Scottish Legal Services Commission (“the Commission”), the independent advisory panel of the Commission, the Competition and Markets Authority, each category 1 and category 2 regulator and each approved regulator of licensed providers.
25. Regulations made under this power would be subject to the affirmative procedure.

### *Summary of evidence*

26. The Committee heard evidence from the Law Society and the Faculty of Advocates that this delegated power should be removed from the Bill. The Law Society of Scotland said, “[the] objectives and professional principles are far too important to be left to delegated powers.” They further noted that they, “do not anticipate a need for quick change in the future.”<sup>v</sup> The Faculty of Advocates agreed with this view.
27. Both stakeholders also considered that conferring such a power on the Scottish Ministers would give Ministers direct control over the legal profession and the regulators, which could be open to abuse. The Faculty of Advocates said:

” “Section 5 would give ministers the power to introduce new criteria, principles and objectives. That creates the potential to give Government direct control over the ethical and professional standards of the profession. That direct control by Government over how lawyers do their job and what standards they should be expected to maintain, by its nature, runs the risk of interference with independent regulation. That is completely unwarranted.”<sup>vi</sup>
28. The Minister stated that flexibility is required in order to future proof the legislation, noting that objectives had been updated in the last ten years, and that “regulatory best practice may change over time.”<sup>vii</sup> She said that the Scottish Government is considering bringing forward amendments which would make the regulations subject to the Lord President’s consent and limit the scope of the power by stipulating that such regulations may only be made on the request of certain bodies, stating:

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v Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 16.](#)

vi Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 19.](#)

” “In order to strengthen the safeguards, we intend to introduce amendments that would require the Lord President’s consent to be gained before any changes are made to the regulatory objectives or the professional principles, or to how they apply. We are also considering amendments that would limit the scope of how any such changes may be sought by limiting that to being done only at the request of certain bodies, such as the regulators or the consumer panel of the Scottish Legal Complaints Commission.”<sup>viii</sup>

29. In response to the Committee’s letter, the Lord President stated in relation to this power:

” “Given the constitutional issues which this Bill creates, the senior judiciary do not think it is acceptable for the Scottish Ministers to have a delegated power, as set out in section 5 of the Bill, to add to, amend or remove the regulatory objectives and professional principles. Changing those matters goes to the heart of regulating the legal profession. Placing a requirement on Ministers to seek the consent of the Lord President before bringing forward any such regulations risks politicising the office of Lord President, whether consent were given or withheld.”<sup>ix</sup>

**30. The Committee recommends that the power in 5(1) should not be delegated. It is clear to the Committee from evidence received from stakeholders that, in their view, the power is unacceptable and presents constitutional issues.**

## Section 8(5) - Regulatory categories

### Power conferred on: The Scottish Ministers

### Power exercisable by: Regulations made by Scottish Statutory Instrument

### Parliamentary procedure: Affirmative

#### *Provision*

31. Section 8 sets out that a regulator of legal services providers 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 the Association of Commercial Attorneys as category 2 regulators. Section 8(5) confers a power on the Scottish Ministers enabling the amendment of section 8, including the reassignment of the above mentioned regulators to different categories.

32. 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

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vii Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 3.](#)

viii *ibid*

ix Lord President of the Court of Session, [written response to the Committee](#), 17 November 2023.

specialist in nature in terms of the legal work undertaken, and whose membership is comparably less in number.

33. Regulations made under this power would be subject to the affirmative procedure.
34. Before making such regulations, the Scottish Ministers must consult the body whose category is being assigned (or reassigned), the Lord President, the Commission, the independent advisory panel of the Commission, the Competition and Markets Authority, each category 1 and category 2 regulator and each approved regulator of licensed providers.

### Summary of evidence

35. The Committee heard evidence from the Law Society and the Faculty of Advocates on this power. The Faculty of Advocates stated that the power should not be delegated, as the matter of whether a body is in category 1 or category 2 is:

” “really quite a significant matter; it determines the extent of the obligations to which a regulator is subject, and the regulator should be able to know where it stands, having regard to the terms of the legislation.”<sup>x</sup>

36. The Law Society suggested that the power could be acceptable if it included a requirement that the Lord President’s consent is obtained, “given that he is, in effect, the head of the regulatory and justice systems.”<sup>xi</sup>
37. The Minister stated that it is important that the Bill contains a mechanism to alter the category of an existing or new regulator, should there be a significant change in how a regulator meets the relevant criteria. She said that the Scottish Government is considering bringing forward amendments which would make the regulations subject to the Lord President’s consent and limit the scope of the power by stipulating that such regulations may only be made on the request of certain bodies.<sup>xii</sup>
38. In response to the Committee’s letter, the Lord President stated in relation to this power:

” *“Based on the information which has been provided, the senior judiciary is not convinced that it is necessary for Ministers to have a power under section 8(5)(a) of the Bill to switch regulators into different categories. It would be inappropriate for the Faculty of Advocates to be able to be switched to become a category 1 regulator. The Faculty exercises regulatory functions on behalf of the Court of Session. Obtaining a power to change the status of the Faculty is to secure a power to regulate how the Court conducts its business. This is as constitutionally objectionable as the Court taking power to regulate how Parliament conducts its business. Should any further justification be provided about the necessity of such a power, the suitability of a consent mechanism, as distinct from other mechanisms, can be considered.”*<sup>xiii</sup>

x Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 24.](#)

xi Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 23.](#)

xii Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 5.](#)

xiii Lord President of the Court of Session, [written response to the Committee](#), 17 November 2023.

- 39. The Committee recommends that the power in 8(5) should not be delegated. It is clear to the Committee from evidence received from stakeholders that, in their view, there are questions as to the necessity of the power being delegated.**

## **Section 14(8) - Compensation funds**

### **Power conferred on: The Scottish Ministers**

### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

### **Parliamentary procedure: Negative**

#### *Provision*

40. 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. Section 14(4) sets out rules which 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.
41. Before making regulations, the Scottish Ministers must consult the Lord President, each category 1 regulator and the Consumer Panel.
42. Regulations made under this power would be subject to the negative procedure.

#### *Committee consideration*

43. The Scottish Government states in its DPM that the power is required in order to allow for changes to be made to compensation fund requirements to accommodate further changes in how such funds operate. It states that has been necessary with the existing compensation fund operated by the Law Society. It states that any regulations made under this power will be technical in nature, but that the consultation requirement provides a safeguard.
44. It is common for Bills to include a delegated power which allows the Scottish Ministers to make further, technical provision to account for matters which arise when the Bill is operational. The consultation mechanism appears appropriate in the circumstances.

- 45. The Committee accepts the power in principle and is content that it is subject to the negative procedure with a requirement that the Scottish Ministers must consult with various bodies before making such regulations.**

## **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***Provision*

46. Section 20 of the Bill sets out the measures which the Scottish Ministers may take in relation to a category 1 or a 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 them, and to make further provision about the measures that they may take.
47. Before making such regulations, the Scottish Ministers must consult each category 1 and category 2 regulator and obtain the Lord President's consent.
48. Regulations made under this power would be subject to the affirmative procedure.

*Summary of evidence*

49. The Committee heard evidence from the Law Society and the Faculty of Advocates that this delegated power should be removed from the Bill. The Law Society stated that it "represent[s a] fundamental threats to the rule of law and the independence of the judiciary"<sup>xiv</sup>, with the Faculty of Advocates adding it "threatens the independence of the legal profession and that, in turn, threatens the independence of the judiciary"<sup>xv</sup>.
50. The Faculty of Advocates stated that, "the use of the affirmative procedure and the consent of the Lord President—are not sufficient safeguards"<sup>xvi</sup>. The Law Society agreed that no safeguards would make the power acceptable.
51. The Minister stated to the Committee that the power may be necessary, suggesting that the power may be used, for example, "to remove a particular individual from a role within a regulator rather than take measures against the regulator as a whole"<sup>xvii</sup>. She said that the Scottish Government intends to bring forward amendments that would transfer the responsibility for carrying out the review under sections 19 and 20 to the Lord President.
52. In response to the Committee's letter, the Lord President stated in relation to this power:

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xiv Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 27.](#)

xv Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 28.](#)

xvi Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 27.](#)

xvii Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 8.](#)

” *“Much more information will be needed about the detail of how the Government’s proposals in relation to sections 19, 20, 49 and schedule 2 are intended to operate, before an assessment can be made about whether transferring functions from Ministers to the Lord President alleviates our concerns. These will not be adequately addressed by simply replacing a reference to the Scottish Ministers with one to the Lord President.”<sup>xviii</sup>*

53. **The Committee is not content with the power as currently drafted at section 20(6). Based on the evidence received, the Committee cannot come to a view on whether the proposed additional safeguards would alleviate concerns. The Committee echoes the Lord President’s view that “much more information will be needed about the detail of how the Government’s proposals...are intended to operate”.**

## **Section 26(1) - Regulatory scheme**

### **Power conferred on: The Scottish Ministers**

### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

### **Parliamentary procedure: Affirmative**

#### *Provision*

54. Section 25 of the Bill provides that a body may apply to the Lord President and the Scottish Ministers 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. Section 26(1)(d) confers a power of the Scottish Ministers to specify other regulatory matters which should be included in such a scheme.

55. Regulations made under this power would be subject to the affirmative procedure.

#### *Committee consideration*

56. The Scottish Government states in its DPM that the power is required to give the Scottish Ministers flexibility to outline and expand upon regulatory matters which are to be covered by the regulatory schemes, to add clarity or to address unforeseen issues. It states that it anticipates that the power will be used for operational reasons. It also explains that the affirmative procedure has been chosen since it is possible that it could more significantly alter the content of regulatory schemes of accredited regulators.

57. In its additional written evidence to the Committee, the Law Society commented that it had limited comments on this provision, other than it appeared to be a “very broad power”.<sup>xix</sup>

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<sup>xviii</sup> Lord President of the Court of Session, [written response to the Committee](#), 17 November 2023.

**58. The Committee is content with the power in principle and that regulations made under the power would be subject to the affirmative procedure.**

**Section 29(5) -Approval of application and giving effect to the regulatory scheme**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Negative**

*Provision*

59. Section 29 applies where the Lord President and the Scottish Ministers have considered an application by a body to be accredited to provide legal services. Section 29(5) confers a power on the Scottish Ministers to make regulations giving effect to the draft regulatory scheme included with that application, which they must exercise as soon as reasonably practicable after the application has been approved. The Scottish Ministers must also lay before the Parliament draft regulations under section 8(5) to assign the body as a category 1 or category 2 regulator.

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

*Committee consideration*

61. It appears appropriate that the Scottish Ministers have a power to give effect to a regulatory scheme that they have approved via an application.

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

**Section 33(3) and (5) - Review of regulatory schemes**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

*Provision*

63. Section 33 provides that an accredited regulator may or, if requested by the Lord President and the Scottish Ministers, must review its regulatory scheme and propose such revisions to the scheme as it considers appropriate in light of the review. If the Lord President and the Scottish Ministers agree that the proposed revisions to the regulatory scheme are satisfactory, the Scottish Ministers must make regulations giving effect to the revised scheme. Where the Scottish Ministers

and the Lord President do not agree that the proposed revisions are satisfactory but do agree between themselves on revisions that should be made to the regulatory scheme, the Scottish Ministers may direct the accredited regulator to apply the revisions agreed with the Lord President. It must thereafter make regulations giving effect to the revised scheme.

64. Regulations made under this section would be subject to the negative procedure.

*Committee consideration*

65. The Scottish Government states in its DPM that it is appropriate to give effect to a revised regulatory scheme in the same way as an original regulatory scheme.
66. It appears appropriate that the Scottish Ministers have a power to give effect to a revised regulatory scheme.

- 67. The Committee accepts the power in principle, and is content that regulations made under the power would be subject to the affirmative procedure.**

**Section 34(1) - Revocation of acquired rights**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

*Provision*

68. Section 34 provides that where it appears to the Scottish Ministers that a body has failed to comply with a direction under section 33(5) as described above, the Scottish Ministers may by regulations revoke the approval of the application under section 29.
69. Scottish Ministers must not make such regulations without the consent of the Lord President.
70. Regulations made under this power would be subject to the negative procedure.

*Committee consideration*

71. The Scottish Government states in its DPM that it is appropriate that the revocation of any scheme should be through regulations, given that such a scheme was given effect by regulations. It states that the potential impact of revocation on the body means that the affirmative procedure is appropriate.
72. It appears appropriate that the Scottish Ministers have a power to revoke a regulatory scheme where such a body has not complied with a direction issued by the Scottish Ministers on behalf of the Ministers and the Lord President.

73. **The committee accepts the power in principle and is content that regulations made under the power would be subject to the affirmative procedure.**

### **Section 35(1) - Replacement regulatory arrangements for authorised providers**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

#### *Provision*

74. Section 35 provides that the Scottish Ministers may by regulations make provision establishing a body with a view to it becoming a regulator for the purposes of regulating the authorised providers of a discontinuing regulator, amending the regulatory functions of a regulator to enable it to regulate the authorised providers of a discontinuing regulator, or specifying circumstances under which the Scottish Ministers or a body specified in the regulations may directly authorise and regulate the authorised providers of a discontinuing regulator.
75. The Scottish Ministers must not make such regulations without the consent of the Lord President. Such regulations would be subject to the affirmative procedure.

#### *Summary of evidence*

76. The Committee heard evidence from the Law Society on this power, which was concerned that the power gives the Scottish Ministers direct authority to regulate the legal profession, which it objects to; it considers this delegated power should be removed. The Law Society said it was concerned that, “subsection (2) allows ministers to make any modification at all to part 1 of the bill, which we think is extraordinarily broad”<sup>xx</sup>.
77. The Minister explained that the Scottish Government considers that the newer regulators run the greatest risk of encountering circumstances that would render them unable to operate at short notice and create a need for the Scottish Ministers to step in and ensure that their members continued to be authorised to provide legal services to the public while alternative arrangements are worked out. The Minister said:
- ” “given the similarity of the measures in sections 35 and 49, we are exploring amendments that would bring them together in one provision that would maintain the power to take action in urgent situations, take it away from the Scottish ministers, and transfer it to the Lord President.”<sup>xxi</sup> ”
78. In response to the Committee’s letter, the Lord President stated in relation to this power:

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xx Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 41.](#)

xxi Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 9.](#)

” “The senior judiciary has not yet been consulted about a proposal to introduce a mechanism for obtaining the Lord President’s consent [into paragraph 6 of schedule]. Nor have its views yet been sought on any proposed changes to section 35. I cannot comment on those matters at this stage.”<sup>xxii</sup>

**79. The Committee is not content with the power as currently drafted at section 35(1). Based on the evidence received, the Committee cannot come to a view on whether the proposed additional safeguards would alleviate concerns.**

## **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**

### *Provision*

80. 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.

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

### *Committee consideration*

82. The Scottish Government states in its DPM 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.

83. 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.

**84. The Committee accepts the power in principle and is content that regulations made under the power would be subject to the negative procedure.**

## **Section 40(3) - Offence of pretending to be an authorised legal business**

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<sup>xxii</sup> Lord President of the Court of Session, [written response to the Committee](#), 17 November 2023.

**Power conferred on: The Scottish Ministers****Power exercisable by: Regulations made by Scottish Statutory Instrument****Parliamentary procedure: Negative***Provision*

85. 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.
86. Regulations made under this power would be subject to the negative procedure.

*Committee consideration*

87. The Scottish Government states in its DPM 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.
88. 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.

89. **The Committee accepts the power in principle, and is content that regulations made under the power would be subject to the negative procedure.**

**Section 41(2) & (6) – Rules for authorised legal business****Power conferred on: The Scottish Ministers****Power exercisable on: Regulations made by Scottish Statutory Instrument****Parliamentary procedure: Affirmative***Provision*

90. 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 they regulate and make the rules publicly available.
91. 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.
92. Section 41(6) contains a power for the Scottish Ministers to make regulations to allow category 1 regulators to extend the scope of their ALB rules to capture other services provided by the businesses that they regulate (in addition to legal services).

93. Regulations made under these powers would be subject to the affirmative procedure.

### *Summary of evidence*

94. The Committee heard evidence from the Law Society who said that the power in section 41(2):

” “is very broad and that it is an unwarranted extension of ministerial powers into the authorisation rules and practice rules for legal businesses”.<sup>xxiii</sup>

95. The Law Society also said it was concerned that the power in 41(6):

” “might allow Scottish ministers to change the definition of legal services, as set out in sections 6 and 7, by the back door. We contend that the definition of legal services is far too important to be changed by delegated powers and that any changes to that should be subject to full parliamentary scrutiny”.<sup>xxiv</sup>

96. The Faculty concurred with the Law Society's view.

97. The Minister stated that the Scottish Government is considering bringing forward amendments to the power in section 41(2) to:

” “narrow the scope of the power so that a change would be made in response to a request from bodies such as the regulators or the consumer panel. That [the amendment] would introduce a requirement for the Lord President's consent and for consultation with regulators and the other bodies”.<sup>xxv</sup>

98. The Minister also said that work was ongoing to explore amendments which would alleviate the Law Society's concerns about the power in section 41(6). However, the Minister did not provide any further detail on this point.

99. In response to the Committee's letter, the Lord President stated in relation to this power:

” “The senior judiciary is of the view that section 41 should be amended so that it is only the Lord President who approves ALB rules or changes to them. Further clarity is needed on how section 41(6) is intended to operate. In principle, the senior judiciary's view is that the content of what can be included in ALB rules should not be changed unless the Lord President approves draft regulations, before these are laid in Parliament, which Ministers propose to make under section 41(2). What the regulation-making powers seek to govern here is not as significant as in other provisions. Obtaining the approval of the Lord President should therefore provide a sufficient safeguard.”<sup>xxvi</sup>

## **100. The Committee recommends that the Scottish Government review how**

<sup>xxiii</sup> Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 37.](#)

<sup>xxiv</sup> Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 38.](#)

<sup>xxv</sup> Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 11](#)

<sup>xxvi</sup> Lord President of the Court of Session, [written response to the Committee](#), 17 November 2023.



**delegated powers in this section of the Bill should operate in light of comments about “further clarity” by the Lord President.**

### **Section 45(2) – Financial sanctions**

**Power conferred on: The Scottish Ministers**

**Power exercisable on: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Negative**

#### *Provision*

101. 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.
102. The Scottish Ministers must not make such regulations without the consent of the Lord President.
103. Regulations made under this power would be subject to the negative procedure.

#### *Committee consideration*

104. The Scottish Government states in its DPM 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.
105. 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.

106. **The Committee accepts the power in principle, and is content that regulations made under the power would be 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**

#### *Provision*

107. 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.

108. The Scottish Ministers must obtain the Lord President's consent before making such regulations.
109. Regulations made under this power would be subject to the negative procedure.

#### *Summary of evidence*

110. 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"<sup>xxvii</sup>.
111. 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<sup>xxviii</sup>.

112. **The Committee recommends that additional safeguards are built in to the power, including that such regulations may only be made on request from the Lord President.**

### **Section 49(1) - Powers of the Scottish Ministers to intervene**

#### **Power conferred on: The Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

#### **Parliamentary procedure: Affirmative**

#### *Provision*

113. Section 49 provides that the Scottish Ministers may establish, by regulations, a body with a view to it becoming a category 1 regulator and specify circumstances under which the Scottish Ministers may directly authorise and regulate legal business.
114. Section 49(3) provides that the Scottish Ministers must obtain the consent of the Lord President before making such regulations, and that regulations are not to be made unless the Scottish Ministers believes that their intervention is necessary, as a last resort, in order to ensure that the provision of legal services by legal businesses is regulated effectively.

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<sup>xxvii</sup> Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 31.](#)

<sup>xxviii</sup> Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 12.](#)

115. Regulations under this section would be subject to the affirmative procedure.

### *Summary of evidence*

116. The Committee heard evidence from the Law Society and the Faculty of Advocates that both stakeholders object to the inclusion of the power in the Bill. Both said it would allow the Scottish Ministers to directly regulate the legal profession in Scotland, which threatens the rule of law. The Faculty of Advocates said:

” “It is the Government and the state directly regulating the legal profession and it absolutely threatens the independence of the legal profession and contravenes the rule of law” <sup>xxix</sup>.

117. The Law Society and the Faculty of Advocates did not believe that any safeguard would make the power acceptable in principle.

118. The Minister said that the provision is intended to ensure that an appropriate regulator is always in place to regulate authorised legal businesses, should there be no other suitable regulator. She said:

” “Such intervention may be necessary because the members of the regulator may be involved in an on-going court case that might be disrupted, or because of transactions that might put them into difficulty. To avoid that and to respond to it, the Scottish ministers may intervene to create a body to become a new regulator or have another regulator, such as the Law Society, step in to take over the regulation, or they may even regulate the providers themselves.

“...the provision is intended as a measure of last resort in specific circumstances and only in the event that a regulator finds itself unable to operate. It is designed to cover situations in which a regulator of authorised legal businesses gets into difficulty, such as a financial collapse or as a result of regulatory failures.” <sup>xxx</sup>

119. The Minister said that the Scottish Government is considering bringing forward amendments which would transfer the power to the Lord President (and perhaps combine it with the similar delegated power at section 35).

120. In response to the Committee’s letter, the Lord President stated in relation to this power:

” “Much more information will be needed about the detail of how the Government's proposals in relation to sections 19, 20, 49 and schedule 2 are intended to operate, before an assessment can be made about whether transferring functions from Ministers to the Lord President alleviates our concerns. These will not be adequately addressed by simply replacing a reference to the Scottish Ministers with one to the Lord President. For example, in relation to section 49, how would the Lord President set up a new regulator? How would this all be funded? In what circumstances would the Lord President directly regulate legal businesses?” <sup>xxxi</sup>

<sup>xxix</sup> Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 33.](#)

<sup>xxx</sup> Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 13.](#)

**121. The Committee is not content with the power as currently drafted at section 49(1). Based on the evidence received, the Committee cannot come to a view on whether the proposed additional safeguards would alleviate concerns. The Committee echoes the Lord President’s view that “much more information will be needed about the detail of how the Government’s proposals...are intended to operate”.**

**Section 56 inserting new section 12A into the Legal Profession and Legal Aid (Scotland) Act 2007 – Services complaint upheld: failure to refund fees and outlays**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Negative**

*Provision*

122. New section 12A relates to circumstances where a complaint against a practitioner or their employer has been upheld and therefore the complainer is entitled to a refund of fees. If any portion of the fee is unpaid within 90 days as a result of the death, insolvency or cessation of trade of the practitioner, the fee refund may be treated – for the purposes of professional indemnity – as if it were an amount of compensation. Subsection (3) provides that the maximum amount of fee refund, taken together with any amount of compensation that the Commission directed the practitioner pay to the complainer, is £35,000. Subsection (4) provides that the Scottish Ministers may by regulations amend that amount.

123. Before making such regulations, Scottish Ministers must consult with the relevant regulators and such groups representing consumer interests as they consider appropriate.

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

*Committee consideration*

125. The Scottish Government states in its DPM that the power is required in order that the amount specified can be adjusted from time to time to reflect inflation. It notes that the negative procedure has been chosen as such regulations will not raise issues of complexity.

126. 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.

**127. The Committee accepts the power in principle, and is content that regulations made under it would be 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**

### *Provision*

128. 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.
129. Before making such regulations, the Scottish Ministers must consult with the Lord President, each category 1 and 2 regulator and the CMA.
130. Regulations made under this power would be subject to the affirmative procedure.

### *Committee consideration*

131. The Scottish Government explains in its DPM that it is taking the power to allow the Scottish Ministers to widen or narrow the scope of legal services that may only be undertaken by qualified persons, in order to reflect significant changes in the legal services market or to respond to emerging risks. It states that the affirmative procedure reflects that it may have a notable impact on those who currently provide regulated and unregulated legal services.
132. The Law Society provided additional written evidence to the Committee following the evidence session. In this additional evidence it stated that it was content with this power but consider that its exercise should be subject to the “super-affirmative” procedure. It said “we believe that the exercise of this power should be subject to the “super-affirmative” parliamentary process because changing the definition of “restricted legal services” is a significant step which requires both consultation (already provided for) and an extra level of parliamentary scrutiny”<sup>xxxii</sup>.

- 133. The Committee accepts the power in principle, but suggests that its exercise should be subject to additional parliamentary scrutiny, commonly referred to as the "super affirmative procedure", such as laying draft regulations in Parliament on which representations may be made.**

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xxxii Law Society of Scotland, [supplementary written evidence to the Committee](#), 2 November 2023.

## Section 90: Ancillary provision

### Power conferred on: The Scottish Ministers

### Power exercisable by: Regulations made by Scottish Statutory Instrument

### Parliamentary procedure: Affirmative procedure if modifying primary legislation, otherwise negative procedure

#### *Provision*

134. Section 90 makes standard ancillary provision, giving the Scottish Ministers the power to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Act flowing from the Bill.
135. By virtue of subsection (2), regulations made under section 90 may modify any enactment, including the Act flowing from the Bill
136. Section 90(3) provides that the affirmative procedure will apply where regulations made under section 90 amend primary legislation, and that otherwise the negative procedure will apply.

#### *Committee consideration*

137. This power is considered at paragraphs 87 to 90 of the DPM.
138. The power to make standalone ancillary provision by regulations is common in modern primary legislation. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision made under it.
139. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which would not be an effective use of either the Parliament's or the Scottish Government's resources.

140. **The Committee accepts the power in principle, and is content that regulations made under it would be subject to the affirmative if modifying primary legislation, and otherwise would be subject to the negative procedure.**

## Section 92: Commencement

### Power conferred on: The Scottish Ministers

### Power exercisable by: Regulations made by Scottish Statutory Instrument

### Parliamentary procedure: Laid, No procedure

#### *Provision*

141. Section 92(3) confers a regulation making power on the Scottish Minister which will

used to determine the commencement dates of all provisions of the Bill other than sections 89-93.

142. Such regulations are to be laid before the Parliament but would not be subject to any further parliamentary procedure.

*Committee consideration*

143. It is standard to take a power at the end of a Bill to commence those sections which are not commenced by the provisions of the Bill itself. This allows to Scottish Ministers to appoint the day on which those sections are to be commenced.
144. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

145. **The Committee is content with the power in principle, and that regulations made under it would be laid before the Parliament but not subject to any further 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**

*Provision*

146. 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.
147. Before making such regulations, the Scottish Ministers must consult the Lord President, the Law Society's regulatory committee and the Consumer Panel.
148. Regulations made under this power would be subject to the affirmative procedure.

*Summary of evidence*

149. The Committee heard evidence from the Law Society that whilst it is not opposed to the delegation of the power in principle, it thought that there should be a requirement to "give reasons for any broader changes. Reasons and an explanation should be given to the Parliament before it votes on the regulations." <sup>xxxiii</sup>
150. The Minister stated that the Scottish Government intends to bring forward amendments which would require "the Lord President's consent to be obtained before any regulations are made using that provision and which will narrow the

scope so that it will be used in response to a request by a regulator or the consumer panel.”<sup>xxxiv</sup>

**151. The Committee recommends that additional safeguards are built in to 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.**

## **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: Super-affirmative**

#### *Provision*

152. 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 Scottish Ministers 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.
153. Regulations may not be made unless the regulator has been given a decision notice, consultees have been provided with draft regulations, and draft regulations and an explanatory document has been laid before the Scottish Parliament and approved by resolution of the Parliament.
154. This procedure is commonly referred to as the super affirmative procedure.

#### *Summary of evidence*

155. The Committee heard evidence from the Law Society and the Faculty of Advocates that this power is intertwined with section 20 and on that account, both stakeholders have called for its removal.
156. 1. The Law Society stated, “if regulatory functions were to be changed, it should be done by primary legislation only”<sup>xxxv</sup>. Likewise, the Faculty of Advocates did not think it is “properly within the scope of delegated powers”<sup>xxxvi</sup>.
157. The Minister stated that the power could be used, for example, “If it was considered that the Law Society had failed to properly regulate conveyancing or executry practitioners”<sup>xxxvii</sup>.

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<sup>xxxiv</sup> Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 14.](#)

<sup>xxxv</sup> Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 40.](#)

<sup>xxxvi</sup> Delegated Powers and Law Reform Committee. [Official Report, 24 October 2023. Col 40.](#)

<sup>xxxvii</sup> Delegated Powers and Law Reform Committee. [Official Report, 7 November 2023. Col 16.](#)



158. She also said that the Scottish Government is considering bringing forward amendments which provide that regulations could only be made on the recommendation of the Lord President, and that the Lord President's consent would also be required.

159. In response to the Committee's letter, the Lord President stated in relation to this power:

” *“Much more information will be needed about the detail of how the Government's proposals in relation to sections 19, 20, 49 and schedule 2 are intended to operate, before an assessment can be made about whether transferring functions from Ministers to the Lord President alleviates our concerns. These will not be adequately addressed by simply replacing a reference to the Scottish Ministers with one to the Lord President.”* <sup>xxxviii</sup>

160. **The Committee is not content with the power as currently drafted at schedule 2, paragraph 23. Based on the evidence received, the Committee cannot come to a view on whether the proposed additional safeguards would alleviate concerns. The Committee echoes the Lord President's view that “much more information will be needed about the detail of how the Government's proposals...are intended to operate”.**

