LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – **the Legal Profession**

Chapter 3 – Solicitors and Other Representatives

The Law Society

Section 133 – Regulatory committee

266.   This section amends the 1980 Act by inserting new sections 3B-3G, which require the Council of the Society to establish a regulatory committee, and set out various rules in relation to that committee. New section 3B provides that the regulatory functions of the Council must be carried out on its behalf by an independent regulatory committee, at least 50% of the membership of which must be lay persons.

267.   A key part of the regulatory committee's independence is that it alone can make decisions relating to regulatory matters and so subsection 3 of new section 3B prohibits the Council from exercising its regulatory functions by any other means and from undue interference in the business of the regulatory committee. This does not prevent the Council from exercising reasonable control and oversight of the regulatory committee, as it does currently with other committees, for example requiring regular reports, exercising proper financial control, and removing members under appropriate circumstances. However, it cannot interfere in the committee's regulation of the profession by, for instance, setting performance targets, standards or timescales.

268.   Despite the prohibition on the Council carrying out regulatory functions, subsection (4) of new section 3B allows the regulatory committee to determine that in a particular case action needs to be taken by the Council to ensure that its regulatory functions are carried out appropriately. For example, this may be used where the Council has a specific statutory obligation. If the regulatory committee makes such a determination the Council must, when taking the action in question, follow any directions issued by the Committee, which is still to make the regulatory decisions in the case.

269.   Subsection (1) of the new section 3C provides rules that apply to the regulatory committee, in particular, rules relating to its composition regarding solicitors and lay members (lay members are defined in subsection (4)). Subsection (2) provides that sub-committees of the regulatory committee are subject to the same rules as the regulatory committee itself (set out in new section 3C(1)), but allows such a sub-committee to be chaired by a solicitor and also to co-opt people who are not members of the regulatory committee.

270.   Subsection (3) of new section 3C ensures that the regulatory committee can still function where the number of lay members is temporarily lower than it should be and that no decisions are invalid because of such a temporary shortfall.

271.   New section 3D provides that disputes between the Council and the regulatory committee in relation to new section 3B will be resolved by arbitration. In such a dispute, the Lord President will appoint an arbitrator should the parties fail to agree on one themselves. The arbitrator's decision is final and binding on both the committee and the Council.

272.   The Scottish Ministers are given a regulation-making power in subsection (1) of the new section 3E to prescribe the maximum size of the regulatory committee or sub-committees of it, to prescribe a maximum proportion of the committee or sub-committee or it which may comprise co-opted members, to make further provision about the Council's regulatory functions if necessary to ensure the regulatory functions are exercised independently and properly, and also to modify in certain respects the definition of the Council's "regulatory functions". Before making such regulations, the Scottish Ministers must consult the Council.

273.   New section 3F defines the Council's regulatory functions.

274.   New section 3G provides that if the Society becomes an approved regulator, its regulatory functions include any relevant functions in relation to that role.