

Regulatory functions of the Lord President and the Court of Session in respect of the legal profession in Scotland as at December 2024*

Provision	Power conferred
See Appendix A for a short explanation of the Court of Session's longstanding supervisory role which has developed in common law.	
Solicitors (Scotland) Act 1980	
Section 3D(3)(b)	In the event of a regulatory dispute arising between the Law Society's regulatory committee and its Council, it can be submitted to and resolved by arbitration. If the parties do not agree on the arbitrator, the Lord President can appoint an arbitrator on request made by both or one of the parties.
Section 5(1)	The Law Society Council may, with the concurrence of the Lord President, make regulations relating to training.
Section 6(1)(c)	The fee to be paid for admission as a solicitor is to be set by the Council and approved by the Lord President.
Section 11(1)	The Lord President may give directions to the Council in relation to the carrying out of their duties in connection with the keeping of the roll and they shall give effect to any such direction.
Section 25A(8)	The Law Society Council grants rights of audience in the CoS, Supreme Court, Judicial Committee of the Privy Council and the High Court of Justiciary. Subsection 4 requires the Council to make rules about the matters to be included in methods of instruction and qualifications of trainers as well as the manner in which a solicitor's knowledge of the practice and procedure and professional conduct is to be demonstrated. The Lord President is to consider and approve such rules having 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.
Section 25A(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.
Section 34(3)	The Law Society Council shall make rules relating to the professional practice, conduct and discipline of solicitors. 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.

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Regulatory functions of the Lord President and the Court of Session as at December 2024*

Section 35(1)	The Law Society Council shall make accounts rules. Per section 34(3), rules made under section 35 shall not have effect unless the Lord President, after considering any objections he thinks relevant, has approved the rules so made.
Section 44(1)	The Law Society Council may make rules relating to professional indemnity for solicitors, former solicitors and incorporated practices with the concurrence of the Lord President.
Section 52(2)	The Scottish Solicitors' Discipline Tribunal shall, with the concurrence of the Lord President, make rules regulating its procedure on complaints and appeals to the SSDT.
Section 59A(3)	The Council may make rules in respect of any matter relating to the admission, enrolment and professional practice of notaries public. These rules have no effect unless the Lord President, after considering any representations he or she thinks relevant, has approved the rules so made.
Section 64D	The Lord President can ask the Scottish Ministers to require the Law Society Council to review a rule which the Scottish Ministers have already approved under section 64B. The Lord President and Scottish Ministers are to submit the amended rule / re-submit the rule if not revised to the Lord President and Scottish Ministers. Further provision is made for the situation where the Scottish Ministers and Lord President agree or do not agree the revised rule.
Schedule 4, paragraph 1A	The Lord President shall appoint solicitor members to sit on the SSDT as well as non-lawyer members (after consultation with the Scottish Ministers).
Schedule 4, paragraph 2	The Lord President may reappoint members of the SSDT.
Schedule 4, paragraph 3	The Lord President may terminate appointments of members of the SSDT.

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Regulatory functions of the Lord President and the Court of Session as at December 2024*

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990	
Section 17(11) and (11A)	The Law Society Council may make rules for regulating the conduct and practice of conveyancing practitioners. Such rules shall not have effect unless they have been approved by the Lord President and Scottish Ministers.
Section 18 (10) and (10A)	The Law Society Council may make rules regulating the conduct and practice of executry practitioners. Such rules shall not have effect unless they have been approved by the Lord President and Scottish Ministers.
Section 25	Bodies which, for the purpose of enabling any one of their members who is a natural person to acquire rights to conduct litigation and rights of audience, can make an application to the Lord President and the Scottish Ministers.
Section 26	<p>The Lord President is to consider the draft regulatory scheme submitted to him in relation to matters set out in section 25(2). In doing so, the Lord President is to have regard to:</p> <ul style="list-style-type: none"> (a) the desirability of there being common principles applying in relation to the exercise 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; and (b) whether the provisions of the draft scheme are such as to achieve; and 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>The Lord President shall grant the application if both the Lord President and the Scottish Ministers are satisfied with the draft scheme.</p>
Section 27(4)	The Lord President can ask the body to which a person with a right to conduct litigation or right of audience belongs to suspend that person from exercising that right, pending determination of a complaint against said person by the body.
Section 28	The Lord President and Scottish Ministers are to consider applications for permission to surrender the entitlement of a body's members to acquire rights to conduct litigation or rights of audience. The Lord President and Scottish Ministers can issue joint directions to the body in question and if both are satisfied, the Lord President shall grant the application to surrender.

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Regulatory functions of the Lord President and the Court of Session as at December 2024*

Section 30	The Scottish Ministers have a duty to consult the Lord President before making regulations which enable practitioners qualified to practice in England/Wales/Northern Ireland to exercise prescribed rights of audience / to conduct litigation in Scotland, and before making regulations which make provision for such practitioners to become qualified to practise in Scotland.
Section 42	The Lord President can request review of a rule or draft scheme (in relation to bodies who may apply for their members to be given rights of audience, to conduct litigation etc.) approved by Secretary of State. Provision is made for the Lord President and Secretary of State to consider changes to the rule or scheme.
Schedule 2, paragraph 2	The Lord President and Scottish Ministers shall consider written representations relating to any draft scheme submitted under section 35.
Legal Profession and Legal Aid (Scotland) Act 2007	
Section 32(5)	Before making rules as to its practice and procedure or varying those rules, the Scottish Legal Complaints Commission must consult with the Lord President (and others).
Schedule 1, paragraph 2(2)	Members are appointed by the Scottish Ministers, having consulted the Lord President.
Schedule 1, paragraph 5(2) and (3)	The chairing member may not remove a member from office without the agreement of the Lord President. The Lord President may, by written notice, remove the chairing member from office if the Lord President is satisfied that the member has become insolvent; has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission; has been convicted of a criminal offence; or is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.
Legal Services (Scotland) Act 2010	
Section 6(6)	The Lord President may consider and, if content, approve changes to the number of approved regulators which can be approved by the Scottish Ministers to regulate licensed legal service providers.
Section 7(6)	The Scottish Ministers may make regulations making further provision relating to the process for seeking approval or criteria for their approval. Before making such regulations, the Scottish Ministers must consult the Lord President.

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Section 8(1)	Before deciding whether to approve an applicant as an approved regulation, the Scottish Ministers must consult the Lord President, amongst others.
Section 9	The Scottish Ministers must not approve the applicant as an approved regulator unless the Lord President agrees to its being approved as such. The Scottish Ministers are to impose 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). The Lord President's agreement is required for the imposition of any conditions under section 7(2) (apart from conditions to which subsection (2) relates), restrictions under section 7(3), and the variation of any such conditions or restrictions under section 7(4).
Section 12(4)	An approved regulator may not amend their regulatory scheme without the Scottish Ministers' approval and the Lord President must be asked to consent to the Scottish Ministers' approving the amendments.
Section 13	The Scottish Ministers may make regulations making provision for regulatory conflicts but before doing so, must have the Lord President's consent.
Section 29	The Scottish Ministers may by regulations make further provision about the internal governance arrangements of approved regulators but before doing so, must have the Lord President's agreement.
Section 38 (6) and (8))	<ul style="list-style-type: none"> • Section 37 allows the Scottish Ministers to monitor the performance of approved regulators of licensed legal service providers (legal businesses owned partly by non-lawyers which the 2010 Act intended to create and regulate) in such a manner as they consider appropriate. Section 38 enables the Scottish Ministers to take one or more measures in subsection 4 if they consider it appropriate in the circumstances of the case. Those measures are setting performance targets, directing that action be taken, publishing a statement of censure, imposing a financial penalty, amending an authorisation given under section 10, and rescinding an authorisation given under that section. • The Lord President's agreement is required for the taking of any of the measures mentioned in subsection (4) except imposition of a financial penalty. Before making regulations to specify other measures that can be taken by them or make further provision about the measures that they may take (including for the procedures to be followed), the Scottish Ministers must have the Lord President's agreement.

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Section 44	This provision allows the Scottish Ministers to make regulations (a) which establish a body with a view to its becoming an approved regulator and (b) which allow them to act as an approved regulator in such circumstances as the regulations may prescribe. No regulations are to be made without the Lord President's agreement.
Section 45(2)	Before making regulations conferring additional functions on approved regulators, the Scottish Ministers must have the Lord President's agreement.
Section 49(5)	Licensed providers of legal services regulated by the 2010 Act can be owned by non-lawyers, however, the stake that must be held by solicitor investors or another regulated professionals is 51%. Before making regulations to specify what is or is not a regulated profession, a professional association, professional activities (or qualifications) or membership of a profession, the Scottish Ministers must have the Lord President's agreement.
Section 51(10)	Before making regulations concerning Heads of Legal Services (a role within legal service providers created by the Act) and their functions as well as extending which other non-solicitors can hold that role, the Scottish Ministers must consult the Lord President.
Section 52(8)	Before making regulations concerning Heads of Practice (another role within legal service providers created by the Act) and their functions, the Scottish Ministers must consult the Lord President.
Section 53(6)	Before making regulations relating to Practice Committees (which can operate as an alternative to a Head of Practice), the Scottish Ministers must consult the Lord President.
Section 67(5)	Before making regulations to amend the percentage an "exemptible investor" owns (an investor who has less than a 10% stake in the total ownership or control of the licensed provider) the Scottish Ministers must have the Lord President's agreement.
Section 119	The Lord President and the Court of Session are listed as regulatory authorities which must, so far as practicable when exercising the authority's regulatory functions, act in a way which is compatible with the regulatory objectives, and which it considers most appropriate with a view to meeting those objectives.
Section 120	The Court of Session is responsible for admitting persons to (and removing persons from) the office of advocate, prescribing the criteria and procedure for admission and removal, and for regulating the professional practice,

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	conduct and discipline of advocates. The Court’s responsibilities are exercisable on its behalf, in accordance with such provision as it may make for the purpose, by the Lord President, or the Faculty of Advocates.
Section 121	Rules which prescribe the criteria or procedure for admission to or removal from the office or advocate and regulates in respect of any matter the professional practice, conduct or discipline of advocates must be approved by the Lord President (if made by the Faculty). If such rules are made by the Lord President or the Court of Session, the Faculty must be consulted on these.
Section 125(4)	Before the Scottish Ministers make regulations to modify the definition of citizen’s advice body in section 65 of the Act, the Scottish Ministers must consult the Lord President.
Section 147(3)	Before the Scottish Ministers make regulations to modify the percentage referred to in section 49 (see above) or repealing section 49, the Scottish Ministers must consult the Lord President.
Schedule 5, paragraph 4	<ul style="list-style-type: none"> • Where the Scottish Ministers are satisfied that an act or omission of an approved regulator (or a series of acts or omissions) 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 38(4)(a) to (d), the Scottish Ministers may amend the authorisation of the approved regulator previously granted under section 10. • After a period of consultation with the approved regulator, the Scottish ministers may consult the Lord President. The Lord President is to give the Scottish Ministers such advice in respect of the proposed amendments as the Lord President thinks fit, and in deciding what advice to give, have regard (in particular) to the likely impact of the proposed amendments on the operation of the Scottish courts. The approved regulator, or any other person who holds information relevant in relation to proposed amendments, must provide the Lord President with such information about the proposed amendments (or their likely consequences) as the Lord President may reasonably require.
Schedule 7, paragraph 3	<ul style="list-style-type: none"> • Where an approved regulator proposes to surrender its authorisation, it must give the Scottish Ministers a ‘surrender notice’. That notice must be sent to the Lord President (amongst others). The Lord President is to give the Scottish Ministers such advice in respect of the proposed surrender as the Lord President thinks fit

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	<p>and in deciding what advice to give, have regard to the likely impact of the proposed surrender on the operation of the Scottish courts.</p> <ul style="list-style-type: none"> The approved regulator, or any other person who holds information relevant to the proposed surrender, must provide the Lord President with such information about the proposed surrender (or its likely consequences) as the Lord President may reasonably require.
Schedule 7, paragraph 4	When deciding whether to agree to the proposed surrender, the Scottish Ministers must have regard to any advice given to them by the Lord President.
Act of Sederunt (Regulation of Advocates) 2011/312	
Article 4, together with section 121(2) of the 2010 Act.	The Faculty of Advocates is responsible for making and publishing rules relating to the professional practice, conduct and discipline of advocates. Such rules must be approved by the Lord President, per section 121(2)(a) of the Legal Services (Scotland) Act 2010.
Faculty of Advocates Disciplinary Rules 2019	
Rule 96 (link to 2019 Rules)	This rule makes provision for the composition of the Disciplinary Tribunal. The Lord President appoints the Chair of the Disciplinary Tribunal. This person is to be a retired member of the Judicial Committee of the House of Lords or Justice of the UK Supreme Court, a retired Senator of the College of Justice, or other appropriate person. Appointments are 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
Rule 96 (link to 2019 Rules)	Where the Complainer or the Member as the case may be, on cause shown, objects within a reasonable time to the appointment of the Chair appointed to the Disciplinary Tribunal, or the Chair declines his or her appointment, the Lord President of the Court of Session may appoint another Chair from the panel of three referred to in paragraph 96a. Any objection shall be made in writing, and state the grounds of objection.

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Faculty of Advocates Intrans Regulations 2009	
Regulation 14(2) (link to 2009 Regulations)	Before removing the name of any advocate from the roll, because of conduct which renders the advocate unfit to exercise the office of advocate, the Faculty must consult with the Lord President and Lord Justice Clerk.
Civil Evidence (Family Mediation) (Scotland) Act 1995	
Section 1	<ul style="list-style-type: none"> • Subsection (1) and (2) provide that no information as to what occurred during family mediation to which the Act applies shall be admissible as evidence in any civil proceedings, provided that mediation was carried out by mediators who are accredited by bodies approved by the Lord President for these purposes. • Subsection (3) allows the LP to approve an application by a body for whatever duration the LP thinks fit and to withdraw approval at any time. New bodies and existing bodies must submit applications for approval / re-approval which must include such information as the LP thinks fit (subsection 6). These are set out in the Notes for Applicants devised by LPPO.

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Appendix A

Common law on the supervisory jurisdiction of the Court of Session. An extract from the Inner House decision in *Taylor Clark Leisure plc v The Commissioners for Her Majesty's Revenue and Customs* [2015] CSIH 32, paragraphs 21-23:

“...In Scotland civil justice emanates from the College of Justice under the headship of the Lord President. The College of Justice, of which the judges are the senators, includes counsel, clerks of court, macers and, in my view, advocates' clerks. The College provides the framework of discipline and the standards of conduct by which each member is regulated. In this way the Court protects its own interests by having recourse against any member of the College whose conduct falls below the standards that the court requires (cf Maxwell, Practice of the Court of Session, p 24). For more than three centuries the right of the court to determine who may be admitted as advocates, and therefore become subject to its disciplinary rules, has been delegated by the court to the Faculty itself (Act of Sederunt 25 June 1692; Stair Memorial Encyclopaedia Re-Issue, Legal Profession , paras 32. 40, 47). Nevertheless a prospective inrant to the Bar must first petition the court for admission. Furthermore the Faculty's disciplinary rules are at all times subject to the approval of the Lord President.

“A key feature of the College of Justice that has applied since its foundation is that counsel in Scotland hold the public office of advocate. The public nature of the office is reflected in the duty of counsel to appear on behalf of any litigant who requests his services and tenders a reasonable fee. It is reflected in the power of the Dean of Faculty to require counsel, in exercise of the Faculty's tradition, to withdraw from a case if counsel should be required to defend an accused person who for any reason is without proper representation. It is also reflected in the rules of priority that require counsel, when instructed for the Appeal Court or the Inner House, to return conflicting instructions for any lower court. These considerations emphasise that the litigant's right to be represented by counsel of his choice is not absolute.

“This complex of rights and public duties holds the College of Justice together and maintains standards of conduct in the justice system...”

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