

# LEGAL SERVICES (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – the Legal Profession**

##### *Chapter 4 – Other Bodies*

#### **Scottish Legal Aid Board**

##### *Section 140 – Exclusion from giving legal assistance*

282. This section amends section 31 of the 1986 Act. Currently, the Society and the Faculty have the power to prevent solicitors and advocates respectively (on the grounds of their conduct) from being instructed by a client to whom legal aid or advice and assistance is available. This amendment transfers the current powers of the Society and the Faculty to the Board. There is an appeal under the 1986 Act to the Court of Session.

##### *Section 141 – Availability of legal services*

283. [Section 141](#) amends the 1986 Act in order to give the Board responsibility for monitoring the availability and accessibility of legal services in Scotland, including by reference to any relevant factors relating particularly to rural or urban areas, and for giving advice to the Scottish Ministers regarding this. This is linked to the regulatory objective of promoting access to justice, as well as the objectives of promoting the interests of consumers, competition in the provision of legal services, and an independent, strong, varied and effective legal profession.

##### *Section 142 – Information about legal services*

284. [Section 142](#) requires the Society, the Faculty, and the Scottish Courts Service to provide information that the Board might reasonably require in monitoring the availability and accessibility of legal services in Scotland. This is similar to the duty placed on approved regulators (section 32(1)). In addition, for the purposes of the Board's functions of excluding legal practitioners from giving legal assistance under section 31(3) of the 1986 Act, the Society, the Faculty and the SLCC must inform the Board when they uphold conduct or services complaint about a solicitor or an advocate, and give it a summary of the relevant facts.

#### **Scottish Legal Complaints Commission**

##### *Section 143 – Relevant practitioners*

285. [Section 143](#) amends section 46(1) of the 2007 Act. The effect is to amend certain definitions within that section so that the SLCC can deal with complaints against registered European and foreign lawyers.

*These notes relate to the Legal Services (Scotland) Act 2010  
(asp 16) which received Royal Assent on 9 November 2010*

***Section 144 – Minor amendments***

286. This section makes several minor amendments to the 2007 Act.

***Section 145 – The 2007 Act: Further provision***

287. **Section 145** amends section 78 of the 2007 Act which provides for the power of the Scottish Ministers to make ancillary provision by order in relation to the provisions of that Act. The scope of the existing power was limited following changes made by the Legal Services Act 2007 which affected the 2007 Act. This section inserts a new subsection (1A) into section 78 of the 2007 Act, and a reference to that new subsection in section 79 of the 2007 Act, which allows the order making power to be used as intended, including in areas altered by the Legal Services Act 2007.