

SCHEDULE 3
(introduced by section 38(3))

CENSURE

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that—
- (a) 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, or
 - (b) an approved regulator has failed to comply with a requirement imposed on it by or under this Act.

Power to censure

- 2 The Scottish Ministers may make and publish a statement censuring the approved regulator for—
- (a) the act or omission (or series of acts or omissions), or
 - (b) the failure.

Preliminary advice

- 3 Before making the statement, the Scottish Ministers must consult such person or body as they consider appropriate about the proposed statement.

Notice of intention

- 4 (1) If, after consulting under paragraph 3, the Scottish Ministers intend to proceed with making the statement, they must give the approved regulator a notice (a “notice of intention”) of that intention.
- (2) The notice of intention must—
- (a) state that the Scottish Ministers intend to publish the statement,
 - (b) specify the date on which they intend to publish the statement (which must be after the expiry of the period mentioned in paragraph 5(1)),
 - (c) set out the terms of the proposed statement,
 - (d) specify—
 - (i) the act or omission (or series of acts or omissions), or
 - (ii) the failure,to which the proposed statement relates.

Consultation

- 5 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed statement.
- (2) The Scottish Ministers must—
- (a) provide the consultees under paragraph 3 with a copy of any representations received from the approved regulator,

- (b) seek their further views in light of the representations.

Decision

- 6 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 3, when deciding whether to proceed with publishing the statement.
- (2) The Scottish Ministers must—
 - (a) send to the approved regulator a notice (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 3 of their decision,
 - (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
- (3) If the Scottish Ministers decide to publish the statement, the decision notice must contain the statement (and the statement need not be published separately).
- (4) For the purpose of this schedule, relevant persons or bodies include—
 - (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.