

EXPLANATORY NOTES

LEGAL SERVICES (SCOTLAND) ACT 2010

INTRODUCTION

THE ACT

OVERVIEW OF THE STRUCTURE OF THE ACT

COMMENTARY ON SECTIONS

PART 1 – THE REGULATORY OBJECTIVES ETC.

Section 1 – Regulatory objectives

Section 2 – Professional principles

Section 3 – Legal services

Section 4 – Ministerial oversight

Section 5 – Consultation by Ministers

PART 2 – REGULATION OF LICENSED LEGAL SERVICES

Chapter 1 – Approved Regulators

Approved regulators

Section 6 – Approved regulators

Section 7 – Approval of regulators

Section 8 – Pre-approval consideration

Section 9 – Lord President’s agreement

Section 10 – Authorisation to act

Section 11 – Request for authorisation

Regulatory schemes

Section 12 – Regulatory schemes

Section 13 – Reconciling different rules

Licensing rules

Section 14 – Licensing rules: general

Section 15 – Initial considerations

Section 16 – Other licensing rules

Section 17 – Licensing appeals

Practice rules

Section 18 – Practice rules: general

Section 19 – Financial sanctions

Section 20 – Enforcement of duties

Section 21 – Performance report

Section 22 – Accounting and auditing

Section 23 – Professional indemnity

Compensation arrangements

Section 24 – Choice of arrangements

Section 25 – Compensation rules: general

Section 26 – More about compensation arrangements

Internal governance

Section 27 – Internal governance arrangements

Section 28 – Communicating outside

Section 29 – More about governance

Regulatory functions etc.

Section 30 – Regulatory and representative functions

Section 31 – Assessment of licensed providers

Relationship with other bodies

Section 32 – Giving information to SLAB

Section 33 – Reporting to Law Society

Section 34 – Steps open to Society

Section 35 – Financial inspection by Society

Performance and measures

Section 36 – Review of own performance

Section 37 – Monitoring by Ministers

Section 38 – Measures open to Ministers

Schedule 1 – Performance targets

Schedule 2 – Directions

Schedule 3 – Censure

Schedule 4 – Financial penalties

Schedule 5 – Amendment of authorisation

Schedule 6 – Rescission of authorisation

Ceasing to regulate

Section 39 – Surrender of authorisation

Section 40 – Cessation directions

Section 41 – Transfer arrangements

Section 42 – Extra arrangements

Change of regulator

Section 43 – Change of approved regulator

Section 44 – Step-in by Ministers

Additional functions etc.

Section 45 – Additional powers and duties

Section 46 – Guidance on functions

Chapter 2 – Licensed Legal Services Providers

Licensed providers

Section 47 – Licensed providers

Section 48 – Eligibility criteria

Section 49 – Majority ownership

Key duties and positions

Section 50 – Key duties

Section 51 – Head of Legal Services

Section 52 – Head of Practice

Section 53 – Practice Committee

Appointment to position etc.

Section 54 – Notice of appointment

Section 55 – Challenge to appointment

Section 56 – Disqualification from position

Section 58 – Conditions for disqualification

Section 57 – Effect of disqualification

Designated persons

Section 59 – Designated persons

Section 61 – Listing and information

Section 60 – Working context

Non-solicitor investors

Section 62 – Fitness for involvement

Section 63 – Exemption from fitness test

Section 64 – Factors as to fitness

Section 65 – Ban for improper behaviour

Section 66 – Behaving properly

Section 67 – More about investors

Discontinuance of services

Section 68 – Duty to warn

Section 69 – Inability to operate

Section 70 – Safeguarding clients

Section 71 – Distribution of client account

Professional practice etc.

Section 72 – Employing disqualified lawyer

Section 73 – Concealing disqualification

Section 74 – Pretending to be licensed

Section 75 – Professional privilege

Chapter 3 – Further Provision

Achieving regulatory aims

Section 76 – Input by the OFT

Section 77 – Role of approved regulators

Section 78 – Policy statement

Complaints

Section 79 – Complaints about regulators

Section 80 – Levy payable by regulators

Section 81 – Complaints about providers

Registers and lists

Section 82 – Register of approved regulators

Section 83 – Registers of licensed providers

Section 84 – Lists of disqualified persons

Miscellaneous

Section 85 – Privileged material

Section 86 – Immunity from damages

Section 87 – Appeal procedure

Section 88 – Corporate offences

Section 89 – Effect of professional or other rules

PART 3 – CONFIRMATION AND WILL WRITING SERVICES

Chapter 1 – Confirmation Services

Regulation of confirmation agents

Section 90 – Confirmation agents and services

Section 91 – Approving bodies

Section 92 – Certification of bodies

Section 93 – Regulatory schemes

Section 94 – Financial sanctions

Section 95 – Review of own performance

Section 96 – Pretending to be authorised

Other regulatory matters

Section 97 – Revocation of certification

Section 98 – Surrender of certification

Section 99 – Register and list

Ministerial functions

Section 100 – Ministerial intervention

Chapter 2 – Will Writing Services

Regulation of will writers

Section 101 – Will writers and services

Section 102 – Approving bodies

Section 103 – Certification of bodies

Section 104 – Regulatory schemes

Section 105 – Financial sanctions

Section 106 – Review of own performance

Section 107 – Pretending to be authorised

Other regulatory matters

Section 108 – Revocation of certification

Section 109 – Surrender of certification

Section 110 – Register and list

Ministerial functions

Section 111 – Ministerial intervention

Section 112 – Step-in by Ministers

Chapter 3 – Further Provision

Section 113 – Regard to OFT input

Section 114 – Complaints about services

Section 115 – Privilege and immunity

Section 116 – Appeals procedure

Section 117 – Corporate offences

Section 118 – Consequential modification

PART 4 – THE LEGAL PROFESSION

Chapter 1 – Applying the Regulatory Objectives

Section 119 – Application by the profession

Chapter 2 – Faculty of Advocates

Section 120 – Regulation of the Faculty

Section 121 – Professional rules

Section 122 – Particular rules

Chapter 3 – Solicitors and Other Representatives

Removal of practising restrictions

Section 123 – Licensed providers as qualified persons

Section 124 – Practice rules for licensed providers

Section 125 – Citizens advice bodies

Lay representation

Section 126 – Court of Session Rules

Section 127 – Sheriff court rules

Guarantee Fund

Section 128 – Use of Guarantee Fund

Section 129 – Contributions to the Fund

Section 130 – Cap on individual claims

The Law Society

Section 131 – Acting as an approved regulator

Section 132 – Council membership

Section 133 – Regulatory committee

The 1980 Act: further modification

Section 134 – Keeping the solicitors roll etc.

Section 135 – Removal from the roll etc.

Section 136 – Restoration to the roll

Section 137 – Suspension from practice

Section 138 – Accounts rules fee

Section 139 – Powers of Tribunal

Chapter 4 – Other Bodies

Scottish Legal Aid Board

Section 140 – Exclusion from giving legal assistance

Section 141 – Availability of legal services

Section 142 – Information about legal services

Scottish Legal Complaints Commission

Section 143 – Relevant practitioners

Section 144 – Minor amendments

Section 145 – The 2007 Act: Further provision

PART 5 – GENERAL

Section 147 – Further modification

PARLIAMENTARY HISTORY