

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 1 – Approved Regulators

Regulatory schemes

Section 12 – Regulatory schemes

36. **Section 12** sets out the approved regulator’s responsibility to create and implement a regulatory scheme for its licensed providers, and describes what must be included in the scheme. This is regulation of licensed providers as entities – individuals within the entities who are regulated by professional bodies will continue to be so regulated by them. For example, solicitors will be regulated by the Society.
37. The Scottish Ministers have the power to specify by regulations additional matters which the regulatory schemes must cover. This power could be used to address unforeseen issues with the regulatory schemes which may arise once the system is in operation.
38. The scheme should relate to the provision of legal services, as defined in section 3. However, the Scottish Ministers have the power to make regulations which authorise regulatory schemes to deal with other services in addition to legal services (subsection (5)).
39. Subsection (2) requires the scheme to include details about three sets of rules:
 - the licensing rules (that is, rules relating to the application process and the issuing or renewal of licences – see sections 14 to 16);
 - the practice rules (governing how licensed providers operate – see sections 18 to 23); and
 - the compensation rules (governing the arrangements for compensating the clients of licensed providers for financial loss resulting from the dishonesty of the licensed provider or someone in it – see sections 25 and 26).
40. Subsection (4) allows the approved regulator to amend fully or in part its regulatory scheme but any material change requires prior approval of the Scottish Ministers, who must have the agreement of the Lord President and consult any other person or body they consider appropriate. If prior approval for the changes is not given, they are invalid.

Section 13 – Reconciling different rules

41. **Section 13** provides that the approved regulator’s regulatory scheme must include appropriate provision which prevents or resolves regulatory conflicts, as well as avoids unnecessary duplication of regulatory rules. Regulatory conflict is conflict between

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the regulatory scheme and any professional or regulatory rules of any other body which regulates the provision of legal or other services. For example, conflict between a regulatory scheme and the Society's rules or professional regulatory code of an accountant.

42. The Act does not prescribe that one set of rules would automatically “trump” another in the event of any conflict. It will be for approved regulators to identify and address any potential conflicts, and for the Scottish Ministers to consider whether this has been done adequately in assessing any application for approval or authorisation under sections 7 and 10. However, it will be possible for the Scottish Ministers, with the agreement of the Lord President, to make regulations about regulatory conflict under subsection (3).