

# LEGAL SERVICES (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Regulation of Licensed Legal Services**

##### *Chapter 1 – Approved Regulators*

##### **Internal governance**

##### *Section 27 – Internal governance arrangements*

56. This section requires the internal governance arrangements of an approved regulator to make provision to ensure that it acts properly and with independence, that it provides sufficient resources for its regulatory functions in relation to licensed providers and that it reviews regularly how effectively it is exercising its regulatory functions. The section sets out relevant factors (in subsection (2)) which approved regulators must have regard to in connection with the independent exercise of their regulatory functions. One of these is the need to avoid conflicts of interest where possible. In order to mitigate conflicts, there is a need for a clear demarcation of regulatory functions from any representative functions the approved regulator may have (for example, as a professional body). In relation to the Society, section 133 of the Act provides that the Society must set up a regulatory committee.
57. Internal governance arrangements are defined for the purposes of Part 2 of the Act in section 29(4), and the distinction between regulatory and representative functions is defined in section 30.

##### *Section 28 – Communicating outside*

58. **Section 28** provides that internal governance arrangements cannot prevent consultation and communications with persons or bodies outside the approved regulator. This section makes it clear that individuals exercising regulatory functions within an approved regulator can communicate with others involved in the regulation of legal services, and that they can notify the Scottish Ministers of any adverse impact on regulatory independence arising from the representative role of the regulator.

##### *Section 29 – More about governance*

59. **Section 29** provides that the Scottish Ministers may, with the agreement of the Lord President, make regulations including further provision about the internal governance arrangements of approved regulators, but only in relation to their regulatory functions. Before so doing they must consult any approved regulators that would be affected.