

# 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*

#### **Approved regulators**

##### *Section 6 – Approved regulators*

21. This section sets out how a professional or other body can become an approved regulator. This is framed as a two-stage process – the first stage is to obtain approval and the second to obtain authorisation. Essentially this is by application to the Scottish Ministers and this section details what information an application must include. If an application for approval is granted, then this means that the body can now call itself an approved regulator. It is only after successfully being granted an application for authorisation that the approved regulator can regulate its licensed providers. No more than three approved regulators may exist at any one time, though this number may be amended by regulations made by the Scottish Ministers with the agreement of the Lord President.
22. Subsection (6) gives the Scottish Ministers a regulation making power to prescribe fees they can charge. This could allow a charge for each application or an annual regulatory charge or both.

##### *Section 7 – Approval of regulators*

23. [Section 7](#) provides the criteria in relation to which the Scottish Ministers must be satisfied before approving an applicant as an approved regulator. These include, among others, that the applicant:
  - has the necessary expertise as regards the provision of legal services;
  - has a thorough understanding of the application of the regulatory objectives and professional principles; and
  - is adequately resourced.
24. The Scottish Ministers must also be satisfied that the applicant would always exercise its regulatory functions independently of any other person or interest and otherwise properly, that the applicant's regulatory scheme is adequate (with reference to section 12) and that its internal governance arrangements (how it is structured and managed) are suitable (with reference to section 27). The Scottish Ministers must have the consent of the Lord President before approving a body.
25. The Scottish Ministers can approve a body as an approved regulator subject to conditions. Conditions may, for example, restrict an approving body to regulating a particular type of licensed provider, and can be imposed indefinitely or for a period

of at least 3 years. The Scottish Ministers may vary any restrictions or conditions following consultation with the approved regulator. This includes adding or deleting any conditions or restrictions.

26. The Scottish Ministers have the power to make regulations regarding the approval of approved regulators, including in relation to the application process and the approval criteria. Regulations about the approval criteria must relate to the capability of applicants to act as approved regulators.
27. The Scottish Ministers are required to consult the OFT and any other person or body that they consider appropriate before approving an applicant as an approved regulator.

### ***Section 8 – Pre-approval consideration***

28. Before deciding to approve an applicant as an approved regulator, the Scottish Ministers must consult the Lord President, the OFT, other appropriate consumer organisations, and any other bodies and persons as they consider appropriate.
29. Where the Scottish Ministers indicate that an application might not be approved, or if conditions are attached, the applicant can make representations within a 28-day period or take such other steps as it considers necessary (for example, by modifying its application or scheme).

### ***Section 9 – Lord President’s agreement***

30. The Scottish Ministers must have the agreement of the Lord President before approving a body as an approved regulator, or imposing or varying any conditions or restrictions. The Scottish Ministers must also impose conditions about the expertise relating to the provision of legal services as are reasonably sought by the Lord President.

### ***Section 10 – Authorisation to act***

31. Authorisation is the second stage of the process. Having been approved by the Scottish Ministers as an approved regulator, the body may not exercise any of its regulatory functions unless authorised so to do by the Scottish Ministers (subsection (1)). The section also makes provision in relation to the restrictions and conditions that may be placed on authorisation.
32. Subsection (2) provides that the Scottish Ministers can only give their authorisation if they are satisfied or continue to be satisfied as to the matters mentioned in section 7(1) and that it continues to meet any criteria provided for in regulations made under section 7(5)(b).
33. Authorisation may be with or without conditions, may be subject to a time limitation and may also be restricted to particular types of legal services or legal service provider. A restriction in relation to a particular type of legal services may be appropriate where an approved regulator has expertise in a specialised area. One example is a body which regulates accountants which might seek to regulate mixed practices of accountants and lawyers, but not other forms of multi-disciplinary practice. The Scottish Ministers may vary by addition or deletion any restrictions and conditions following consultation with the approved regulator.
34. The Scottish Ministers have the power to make regulations regarding the authorisation process. This power could be used to set out the process for authorisation in more detail, and to address any issues which arise with regard to the criteria used.

### ***Section 11 – Request for authorisation***

35. This section allows requests for authorisation to be made at any reasonable time and to be withdrawn. It requires the Scottish Ministers to notify the applicant and to give reasons if they intend to withhold authorisation or impose conditions. If such

notification is given, the applicant, or the approved regulator, may within 28 days make representations and take any other steps it considers expedient. There is a duty on the approved regulator or applicant to provide the Scottish Ministers with any information they reasonably require.

## **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 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).

## **Licensing rules**

### ***Section 14 – Licensing rules: general***

#### ***Section 15 – Initial considerations***

43. Sections 14 and 15 give details about what the licensing rules that are to be contained in an approved regulator's regulatory scheme, cover. Licensing rules cover areas such as the procedure and requirements involved in making an application to become a licensed provider (including fees payable to the approved regulator).
44. The general approach of the Act is to set out a broad framework and allow approved regulators the flexibility to devise an appropriate set of rules as best fits the services being regulated and which follows best regulatory practice. However, in some instances the Act requires certain mandatory provisions to be contained in the licensing rules. The rules must include provision for consultation with the OFT (see section 15(1)(a) and (2)) where there may be an effect of preventing or restricting or distorting competition within the legal services market, and must set out how the regulator would deal with an application where it believes there would be a material and adverse effect on the provision of legal services (section 15(1)(b)).

#### ***Section 16 – Other licensing rules***

45. This section provides for the possibility of provisional licences to allow a licensed provider to operate in anticipation of the full licence application being granted. This may be used, for example, in a situation where a licensed provider is transferring from one approved regulator to another. This section also requires licensing rules to make provision in relation to non-compliance with, or breaches of, the regulatory scheme.

#### ***Section 17 – Licensing appeals***

46. This section provides for an appeal by a licensed provider (or an applicant to be a licensed provider) to the sheriff against a refusal of its application for a licence or to renew its licence, attach conditions or restrictions to its licence, or to suspend or revoke its licence.

## **Practice rules**

### ***Section 18 – Practice rules: general***

#### ***Section 19 – Financial sanctions***

#### ***Section 20 – Enforcement of duties***

47. Section 18 gives details of what is covered by the practice rules that are to be set out in the approved regulator's regulatory scheme. Section 19 allows practice rules to make specific provision for the financial penalties which may be imposed on licensed providers by approved regulators in relation to a breach of the regulatory scheme by, or a complaint about, a licensed provider and for appeals against their imposition. Section 20 states that practice rules must specify that failure to comply with section 50 (setting out the key duties of licensed providers), any other duties under this Part, or duties under any other enactment, all constitute a breach of the regulatory scheme. Section 20 also sets out requirements for licensed providers to report on and review their performance, and to have their performance and the report assessed by the approved regulator.

#### ***Section 21 – Performance report***

48. This section provides that the practice rules on reviewing and reporting on the performance of licensed providers must require the Head of Practice (or Practice Committee) of a licensed provider to carry out an annual review and send a report to

its approved regulator. The section also sets out certain matters that must be examined in the review.

### ***Section 22 – Accounting and auditing***

49. This section provides that practice rules must require licensed providers to have proper accounting and auditing procedures in place, and include equivalent provisions to the accounts rules in sections 35 to 37 of the 1980 Act for solicitors operating in an incorporated practice. Sections 35 to 37 require the Society to make rules regarding the separate holding of clients' funds, and the provision of an accountant's certificate to demonstrate compliance with those rules.

### ***Section 23 – Professional indemnity***

50. Under this section, practice rules must require licensed providers to have certain professional indemnity arrangements and must include equivalent provision to that on professional indemnity in section 44 of the 1980 Act in relation to an incorporated practice.
51. Section 44 of the 1980 Act provides for the Council of the Society ("the Council") to make rules concerning indemnity for solicitors and incorporated practices against any class of professional liability (for example, for negligence in the delivery of a legal service). The rules may provide for a fund held by the Society, or for insurance with an authorised insurer held by the Society, or require solicitors to take out insurance. Currently, the Society's rules provide that all solicitors acting as principals in private practice must be insured under a single "master policy" held by the Society (Solicitors (Scotland) Professional Indemnity Insurance Rules 2005).

## **Compensation arrangements**

### ***Section 24 – Choice of arrangements***

52. [Section 24](#) requires each approved regulator to choose one of two options in order to provide for a compensation fund for the purposes of compensating clients for monetary losses suffered by reason of dishonesty on the part of its licensed providers. Approved regulators must either create a compensation fund which it must hold and administer in such a way as corresponds with the Scottish Solicitors Guarantee Fund ("the Guarantee Fund"), or use the Guarantee Fund. The approved regulator must inform the Society of its choice.

### ***Section 25 – Compensation rules: general***

53. This section sets out the rules that approved regulators must have about the compensation option chosen under section 24. If an approved regulator chooses to set up its own fund, the compensation rules must set out:
- the purpose of the fund;
  - the minimum amount to be contained within it;
  - the way in which the fund will be administered;
  - the criteria for making payments;
  - the procedure for making a claim, and for determining whether a claim is to be granted;
  - a requirement for licensed providers to contribute to the fund; and
  - the destination of the fund should the approved regulator cease to regulate.

54. If the Guarantee Fund is to be used by an approved regulator, the compensation rules must require licensed providers to contribute to it.

### ***Section 26 – More about compensation arrangements***

55. This section provides that compensation rules may include further compensation arrangements if the approved regulator considers this to be necessary or expedient. It also provides the Scottish Ministers with the power to make further provision, by regulations, relating to compensation arrangements.

## **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.

## **Regulatory functions etc.**

### ***Section 30 – Regulatory and representative functions***

60. [Section 30](#) defines the regulatory and representative functions of an approved regulator under the Act.
61. Subsection (3) makes clear that the Scottish Ministers are not authorised to exercise any of their functions under the Act in relation to an approved regulator's representative functions.

### ***Section 31 – Assessment of licensed providers***

62. **Section 31** provides that each approved regulator (or person who or body that has been delegated this function) is required to carry out periodic reviews of the performance of licensed providers at least once in every 3-year period. The 3-year period starts with the date that the particular licensed provider was issued the licence (subsection (1)). This is an external assessment which complements the annual self-assessment carried out under section 21. The assessment must consider how well the licensed provider has had regard to the regulatory objectives, adhered to the professional principles, complied with the approved regulator’s regulatory scheme and the licence conditions, and any such matters as the approved regulator considers appropriate (subsection (3)).
63. Subsection (2) provides that the Scottish Ministers may require an approved regulator to assess a licensed provider at other times if requested to do so by the SLCC. The SLCC may only make the request if it has significant concerns over the handling of a complaint by a licensed provider.
64. The approved regulator is required to inform the relevant professional association if the assessment of the licensed provider in question reveals professional misconduct (or potential professional misconduct) by any of its members (subsection (7)). For example, if there were indications of misconduct by a solicitor or a chartered accountant employed by the licensed provider, the approved regulator would have to notify the Society or the Institute of Chartered Accountants of Scotland respectively. This could happen whether or not the person in question is involved in the provision of legal services within the licensed provider.
65. Under subsection (9), the Scottish Ministers can make further provisions about the assessment of licensed providers by regulations. This could be used to deal with any unforeseen circumstances, or to elaborate on the assessment procedure and requirements should this be necessary.

### **Relationship with other bodies**

#### ***Section 32 – Giving information to SLAB***

66. The Board has been given the additional duty of monitoring the availability and accessibility of legal services in Scotland, inserted into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) as section 1(2A) by section 141 of the Act. This section provides that an approved regulator must provide the Board with information in relation to this function.

#### ***Section 33 – Reporting to Law Society***

67. **Section 33** requires an approved regulator (but not the Society, should it be one) whose licensed providers make contributions to the Guarantee Fund under the approved regulator’s compensation rules to report to the Society:
- any breach by a licensed provider of the practice rules on accounting and auditing; or
  - any suspicion of financial impropriety which, in the opinion of the approved regulator, may result in the risk of a claim being made on the Guarantee Fund.
68. The approved regulator must make available to the Society any report of an inspection which it has carried out in relation to those practice rules or any other financial procedures regulated by the approved regulator. The approved regulator must also inform the Society of any further action it intends to take (or has taken) in relation to such breaches, suspicions or inspections.

### ***Section 34 – Steps open to Society***

69. **Section 34** makes provision for the situation where the Society suspects that the approved regulator of a licensed provider making contributions to the Guarantee Fund is failing in its enforcement role in relation to the financial procedures of the licensed provider. In those circumstances, the Society must first make representations to the approved regulator in question. If it is not satisfied with the response (or none has been received within a reasonable time), the Society may refer the matter to the Scottish Ministers. In such a referral, the Society may request that the Scottish Ministers take such action as they consider appropriate.
70. The Society may also seek the consent of the Scottish Ministers to inspect a licensed provider's documents, records, and other information at its premises which relate to the licensed provider's client account or any other financial account held by it. The Society may only seek the consent if it suspects that the approved regulator's failure is risking a claim being made on the Guarantee Fund. The Scottish Ministers may only give their consent where they are satisfied that the Society's suspicions are reasonable and that the inspection is necessary.

### ***Section 35 – Financial inspection by Society***

71. **Section 35** sets out certain requirements relating to the inspections which the Society may carry out under section 34. In particular, before carrying out an inspection the Society must consult the approved regulator and give at least 48 hours notice to the licensed provider in question. Following the inspection, the Society must report its findings to the Scottish Ministers and the approved regulator. In such a report, the Society can request that the Scottish Ministers take such action as they consider appropriate. Finally, the licensed provider must co-operate with the Society in relation to any inspection.

## **Performance and measures**

### ***Section 36 – Review of own performance***

72. **Section 36** requires an approved regulator to review its own performance annually and provides for the matters to be covered by the review. A report on the review must be submitted to the Scottish Ministers, who must lay a copy before the Scottish Parliament. It also allows the Scottish Ministers to make further provision by regulations relating to both the review and the report.

### ***Section 37 – Monitoring by Ministers***

73. This section gives the Scottish Ministers a power to monitor performance of approved regulators. It sets out matters which may be included in the monitoring (section 37(2)) and requires an approved regulator to provide information in relation to its regulatory scheme to the Scottish Ministers (section 37(3)).

### ***Section 38 – Measures open to Ministers***

74. **Section 38** describes the options open to the Scottish Ministers should they feel that an approved regulator is not performing its functions adequately. Subsection (4) sets out the measures which can be taken, which include the rescission of a regulator's authorisation to regulate. The measures in (4)(a), (b), (c), (e) and (f) can only be taken by the Scottish Ministers if they have the agreement of the Lord President.
75. More detail as to when these measures will apply and on the procedures relating to these measures can be found in schedules 1 to 6 to this Act.
76. The Scottish Ministers, with the agreement of the Lord President, have the power under subsection (7) to make further provision by regulations regarding the measures that may



be taken in relation to approved regulators. This could be used to give further detail around the specifics of the measures, and the procedure involved. This subsection also gives the Scottish Ministers the power to specify, by regulations, additional measures which can be taken should this be considered necessary. Before making regulations under subsection (6), the Scottish Ministers must consult every approved regulator.

#### ***Schedule 1 – Performance targets***

77. This schedule gives details and the procedures to be followed when the Scottish Ministers set performance targets for approved regulators and also provides a procedure for representations to the Scottish Ministers by the approved regulator.

#### ***Schedule 2 – Directions***

78. This schedule gives details about the procedures to be followed (including consultation and representations) when the Scottish Ministers exercise their power to give directions to an approved regulator.

#### ***Schedule 3 – Censure***

79. This schedule gives further details about the procedures to be followed when the Scottish Ministers, with the consent of the Lord President, use their power to censure an approved regulator for any act or omission (including the procedures for representations).

#### ***Schedule 4 – Financial penalties***

80. This schedule gives further details about the procedures to be followed when the Scottish Ministers use their power to impose a financial penalty on an approved regulator (including the procedures for representations, amounts of financial penalties, appeals, and interest).

#### ***Schedule 5 – Amendment of authorisation***

81. This schedule gives further details about the procedures to be followed when the Scottish Ministers amend the authorisation of an approved regulator (including the procedures for representations).

#### ***Schedule 6 – Rescission of authorisation***

82. This schedule gives further details about the procedures to be followed when the Scottish Ministers use their power to rescind an approved regulator's authorisation (including the procedures for representations).

### **Ceasing to regulate**

#### ***Section 39 – Surrender of authorisation***

83. **Section 39** deals with the situation where an approved regulator ceases to regulate. It allows an approved regulator to surrender its authorisation, with the prior agreement of the Scottish Ministers, under the procedure in schedule 7. Subsection (3) provides that an approved regulator must take all reasonable steps to ensure that the effective regulation of its licensed providers is not interrupted by the surrender of its authorisation. For example, this may involve ensuring that the licensed providers have sufficient time to find and transfer to an alternative approved regulator before authorisation is surrendered.
84. Subsection (4) states that if an approved regulator surrenders its authorisation to regulate, it also loses its status as an approved regulator. This reflects the two-stage process involved in a body becoming a functioning approved regulator – it must first be

approved (section 7), and then given authorisation to regulate by the Scottish Ministers (section 10). In giving up authorisation, both authorisation and approval are removed.

### **Section 40 – Cessation directions**

85. **Section 40** applies where an approved regulator’s regulatory scheme is amended so as to exclude its regulation of certain categories of licensed provider or legal services, or its authorisation is (or is to be) amended under section 38(4)(e), rescinded under section 38(4)(f), or surrendered under section 39(1).
86. **Section 40(2)** gives the Scottish Ministers a wide power to direct an approved regulator to take such action as they consider necessary or expedient for the purpose of providing continued effective regulation of affected licensed providers. This might include, for example, requiring an approved regulator to alter the timing of its surrender of authorisation to ensure that another approved regulator was in a position to accept its former licensed providers.

### **Section 41 – Transfer arrangements**

#### **Section 42 – Extra arrangements**

87. These sections cover the situation whereby licensed providers may be forced to transfer from one approved regulator to another approved regulator. For example, this would occur if an approved regulator surrendered its authorisation or had its authorisation rescinded, or amended an authorisation so it was no longer regulating particular categories of licensed provider or legal services. In such circumstances, the approved regulator must inform its licensed providers of the situation, and notify those which will have to transfer to another approved regulator (section 41(2) and (3)).
88. Subsections (4) and (5) of section 41 set out the process and timescales involved in moving from one approved regulator to another. The changeover period refers to the period of time during which a licensed provider which has been forced to transfer may continue to operate according to the regulatory scheme of its previous regulator, whilst being regulated by the new regulator. There is a requirement on the licensed provider to comply with the new regulator’s rules within the 6-month changeover period.
89. For example, suppose an approved regulator “X” notifies a licensed provider that it is ceasing to exist as an approved regulator, and that a transfer is therefore necessary. The licensed provider would identify a new approved regulator “Y”, and arrange to transfer to it within 28 days (or as soon as was practicable). Starting from the date on which Y took over responsibility for regulating the licensed provider in question, it would have 6 months in which to adopt Y’s regulatory scheme. During the 6-month “changeover” period, the licensed provider is free to continue to comply with only X’s regulatory scheme, but on the day that the changeover period is completed, it must comply fully with Y’s scheme.
90. This process requires the new approved regulator to regulate the licensed provider using the previous approved regulator’s regulatory scheme for the duration of the changeover period.
91. Section 42 gives the Scottish Ministers the power to make regulations relating to transfer arrangements.
92. This power can be used to address any unforeseen circumstances which might occur in the transfer process described in section 41. However, regulations may be used in two particular cases, described in subsection (2).
93. The first of these (subsection (2)(a)) is where a licensed provider has not transferred to a new approved regulator despite being required so to do. In this case, the Scottish Ministers can arrange for the licensed provider in question to be regulated by an approved regulator of their choice (subject to that approved regulator’s consent). This

may be necessary to ensure continuity of regulation where a licensed provider has failed, for whatever reason, to identify a new regulator within a reasonable time.

94. The second case (subsection (2)(b)) is where there is a need to recover fees paid to the former approved regulator, in relation to the current licence of the licensed provider. This may be necessary where, for example, a licensed provider is forced to move to a new regulator whilst having paid an annual fee to its former regulator less than 12 months previously and is unable to recover the outstanding portion of the fee.

## **Change of regulator**

### ***Section 43 – Change of approved regulator***

95. **Section 43** provides for a voluntary transfer by a licensed provider to a new regulator, and sets out the timescale and requirements involved.
96. The new approved regulator must consent for the transfer to take effect. The licensed provider must give notice to the former approved regulator and to the Scottish Ministers. The licensed provider must explain why it is transferring and specify the new regulator. It must also specify the date on which the transfer will occur (which must be within 28 days of the notice) and provide a copy of the new approved regulator's consent to the transfer.
97. The Scottish Ministers have the power (under subsection (6)) to make, by regulations, further provisions relating to such transfers.

### ***Section 44 – Step-in by Ministers***

98. **Section 44** makes provision to allow the Scottish Ministers to ensure that licensed providers are regulated in the absence of a suitable approved regulator. The Scottish Ministers may by regulations either establish a new regulator (subsection (1)) or set themselves up as an approved regulator (subsection (2)) where necessary or expedient in order to ensure that there is effective regulation of the provision of legal services by licensed providers. No regulations may be made unless the Scottish Ministers have the agreement of the Lord President and they believe that their intervention under this section is necessary as a last resort.

## **Additional functions etc.**

### ***Section 45 – Additional powers and duties***

99. This section gives a power to the Scottish Ministers to make regulations conferring additional functions on approved regulators. Before making such regulations, the Scottish Ministers must have the agreement of the Lord President and must consult with every approved regulator and any other person or body they think appropriate.

### ***Section 46 – Guidance on functions***

100. All approved regulators must have regard to any guidance issued by the Scottish Ministers to approved regulators in relation to Part 2 of the Act. Before issuing such guidance, the Scottish Ministers must consult all approved regulators and other persons or bodies as they consider appropriate. Any guidance issued must also be published.