

# LEGAL SERVICES (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 – Confirmation and Will Writing Services**

##### *Chapter 3 – Further Provision*

##### *Section 113 – Regard to OFT input*

230. This section provides that there is an obligation on the Scottish Ministers to take account of any advice given by the OFT within the relevant timescale when they consult the it in respect of an application to be an approving body of either confirmation agents or will writers.

##### *Section 114 – Complaints about services*

231. [Section 114](#) makes provision for complaints by inserting a new Part 2B into the 2007 Act making special provision for confirmation agents and will writers.
232. New section 57H of the 2007 Act provides for Parts 1 and 2 of that Act to apply to complaints about confirmation agents. If they consider it necessary, the Scottish Ministers may modify the way these Parts operate in relation to complaints about confirmation agents and will writers. If there is either a services or a conduct complaint about a confirmation agent or will writer, the approving body is to be regarded as the relevant professional organisation.
233. New section 57I of the 2007 Act provides that a complaint about how an approving body has handled a conduct complaint is dealt with in the same way as a complaint about how a conduct complaint has been handled by a relevant professional organisation (see Parts 1 and 2 of the 2007 Act).
234. New section 57J of the 2007 Act makes provision for the payment of the annual general levy and, if arising, the complaints levy to the SLCC. It also applies provisions of the 2007 Act so that the SLCC is required to consult with approving bodies, confirmation agents and will writers each year in relation to its budget for the next financial year and so that approving bodies are required to provide the SLCC with an estimate of the number of confirmation agents or will writers it regulates and which should be liable to pay the levy in the relevant financial year.
235. New section 57K of the 2007 Act requires approving bodies to collect the annual general levy due to the SLCC from their confirmation agents or will writers. The provisions of the 2007 Act in relation to the failure to pay and late payments of levies are applied to the levies payable by confirmation agents and will writers (section 57K(2) to (5)).

##### *Section 115 – Privilege and immunity*

236. [Section 115](#) provides that any publication of any material under Part 3 of this Act is privileged in relation to the law on defamation unless there was malicious intent in

*These notes relate to the Legal Services (Scotland) Act 2010  
(asp 16) which received Royal Assent on 9 November 2010*

publishing the material. An approving body (and those who work in them) are not liable for any damages for any act or omission in the exercise of their functions unless the act or omission was in bad faith.

***Section 116 – Appeals procedure***

237. This section deals with appeals to the sheriff under Part 3 of the Act (confirmation and will writing services). It provides that an appeal to the sheriff is to be by summary application, details what the sheriff may do with regard to an appeal and provides that the sheriff's determination is final.

***Section 117 – Corporate offences***

238. This section provides that if an offence under Part 3 of the Act is committed by a relevant organisation and the offence involves the connivance, consent, or negligence of a responsible official within that organisation, the official, in addition to the organisation, also commits the offence. Both "relevant organisation" and "responsible official" are defined.

***Section 118 – Consequential modification***

239. These changes to the provision of services relating to confirmation require modification to other legislation (specifically, the Confirmation of Executors (Scotland) Act 1858, the 1980 Act, the 1986 Act, and the 2007 Act) and the Act makes such provision in this section.