

SCHEDULE 1

(introduced by section 38(3))

PERFORMANCE TARGETS

Application

- 1 This schedule applies where the Scottish Ministers—
 - (a) are satisfied that an act or omission of an approved regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, or
 - (b) consider that, for any other reason, it is necessary or expedient for one or more performance targets to be set as respects an approved regulator.

Power to set targets

- 2 (1) The Scottish Ministers may—
 - (a) set one or more performance targets for the approved regulator in relation to its regulatory functions,
 - (b) require the approved regulator to set one or more performance targets in relation to its regulatory functions.
- (2) The approved regulator must (so far as practicable) comply with a performance target set for it under sub-paragraph (1)(a) or (b).

Notice of intention

- 3 (1) Before setting a performance target, or requiring the approved regulator to do so, the Scottish Ministers must give it a notice (a “notice of intention”) of their intention to do so.
- (2) The notice of intention must—
 - (a) state that the Scottish Ministers intend to—
 - (i) set a performance target, or
 - (ii) require that the approved regulator set such a target,
 - (b) describe the proposed target (including the period within which it would have to be met),
 - (c) specify—
 - (i) the act or omission (or series of acts or omissions) to which the proposed target relates,
 - (ii) any other facts which, in their opinion, justify the intended target-setting.

Consultation

- 4 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed target.
- (2) The Scottish Ministers must—

- (a) give a copy of the notice of intention to such persons or bodies as they consider appropriate,
- (b) consult them accordingly.

Decision

- 5 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 4(2), when deciding whether to proceed with the target-setting.
- (2) The Scottish Ministers must—
- (a) send to the approved regulator a notice (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 4(2) of their decision,
 - (c) publish any target set, or requirement made by them, under paragraph 2(1) (a) or (b) in such manner as they consider most appropriate to bring it to the attention of any relevant person or body.
- (3) If the Scottish Ministers’ decision is in favour of target-setting, the decision notice must contain the target.
- (4) An approved regulator must publish any target set by it following a requirement under paragraph 2(1)(b) in such manner as it considers most appropriate for bringing it to the attention of any relevant person or body.
- (5) For the purposes of this schedule, relevant persons or bodies include—
- (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

SCHEDULE 2

(introduced by section 38(3))

DIRECTIONS

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that—
- (a) an act or omission of an approved regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives,
 - (b) an approved regulator has failed to comply with a requirement imposed on it by or under this Act (including a direction imposed in accordance with this schedule),
 - (c) an approved regulator has failed to adhere to its internal governance arrangements (including, in particular, those relating to the independent and effective exercise of its regulatory functions), or
 - (d) an approved regulator has made a material amendment to its regulatory scheme under section 12(4).

Power to direct

- 2 (1) The Scottish Ministers may direct the approved regulator to take—
- (a) in a case falling within paragraph 1(a), such action as they consider will counter the adverse impact, mitigate its effect or prevent its recurrence,
 - (b) in a case falling within paragraph 1(b) or (c), such action as they consider will remedy the failure, mitigate its effect or prevent its recurrence,
 - (c) in a case falling within paragraph 1(d), such action as they consider necessary or expedient in relation to such transitional matters as may arise from the amendment.
- (2) A direction under sub-paragraph (1) may require the approved regulator to modify any part of its regulatory scheme.
- (3) A direction under sub-paragraph (1) must not be framed by reference to—
- (a) a specific disciplinary case, or
 - (b) other specific regulatory proceedings.
- (4) A direction under sub-paragraph (1) may require the approved regulator to refrain from doing something.
- (5) The approved regulator must (so far as practicable) comply with a direction given to it in accordance with this schedule.

Notice of intention

- 3 (1) Before giving a direction to an approved regulator under this schedule, the Scottish Ministers must give it a notice (a “notice of intention”) of their intention to do so.
- (2) The notice of intention must—
- (a) state that the Scottish Ministers intend to give a direction,
 - (b) indicate the terms of the proposed direction (including the date by which it would have to be complied with),
 - (c) explain why the Scottish Ministers are satisfied as mentioned in paragraph 1.

Consultation

- 4 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed direction.
- (2) The Scottish Ministers must—
- (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,
 - (b) give a copy of the notice of intention to such person or body as they consider appropriate,
 - (c) after the expiry of the period for representations—
 - (i) give the recipients under paragraph (b) a copy of any representations received from the approved regulator,
 - (ii) consult them accordingly in relation to the appropriateness of giving the direction.

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- (3) Where the Scottish Ministers consider that the proposed direction may have the effect of preventing competition within the legal services market, or significantly restricting or distorting such competition, they must (additionally)—
- (a) send to the OFT—
 - (i) a copy of the notice of intention,
 - (ii) a copy of any representations received from the approved regulator,
 - (b) consult the OFT accordingly.

Decision

- 5 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 4(2)(c) or (3), when deciding whether to proceed with giving a direction.
- (2) The Scottish Ministers must—
- (a) send to the approved regulator a notice (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 4(2)(c) and (3) of their decision,
 - (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
- (3) If the Scottish Ministers decide to give the direction, the decision notice must contain the direction.
- (4) For the purposes of this schedule, relevant persons or bodies include—
- (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

Extension of time to comply

- 6 (1) The Scottish Ministers may, on an application by an approved regulator made at any time after the giving of a direction, allow an approved regulator additional time to comply with the direction.
- (2) Where such additional time is allowed, the Scottish Ministers must publicise that fact in such manner as they consider most likely to bring it to the attention of any relevant person or body.

Enforcement

- 7 (1) If at any time it appears to the Scottish Ministers that an approved regulator has failed to comply with a direction given under this schedule, they may make an application to the Court of Session for an order as described in sub-paragraph (2).
- (2) On an application under sub-paragraph (1), the Court may (if it decides that the approved regulator has failed to comply with the direction) order the approved regulator to take such steps as the Court thinks fit for securing that the direction is complied with.

SCHEDULE 3
(introduced by section 38(3))

CENSURE

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that—
- (a) an act or omission of an approved regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, or
 - (b) an approved regulator has failed to comply with a requirement imposed on it by or under this Act.

Power to censure

- 2 The Scottish Ministers may make and publish a statement censuring the approved regulator for—
- (a) the act or omission (or series of acts or omissions), or
 - (b) the failure.

Preliminary advice

- 3 Before making the statement, the Scottish Ministers must consult such person or body as they consider appropriate about the proposed statement.

Notice of intention

- 4 (1) If, after consulting under paragraph 3, the Scottish Ministers intend to proceed with making the statement, they must give the approved regulator a notice (a “notice of intention”) of that intention.
- (2) The notice of intention must—
- (a) state that the Scottish Ministers intend to publish the statement,
 - (b) specify the date on which they intend to publish the statement (which must be after the expiry of the period mentioned in paragraph 5(1)),
 - (c) set out the terms of the proposed statement,
 - (d) specify—
 - (i) the act or omission (or series of acts or omissions), or
 - (ii) the failure,to which the proposed statement relates.

Consultation

- 5 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed statement.
- (2) The Scottish Ministers must—
- (a) provide the consultees under paragraph 3 with a copy of any representations received from the approved regulator,

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- (b) seek their further views in light of the representations.

Decision

- 6 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 3, when deciding whether to proceed with publishing the statement.
- (2) The Scottish Ministers must—
 - (a) send to the approved regulator a notice (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 3 of their decision,
 - (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
- (3) If the Scottish Ministers decide to publish the statement, the decision notice must contain the statement (and the statement need not be published separately).
- (4) For the purpose of this schedule, relevant persons or bodies include—
 - (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

SCHEDULE 4

(introduced by section 38(3))

FINANCIAL PENALTIES

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that an approved regulator has failed to—
 - (a) adhere to its internal governance arrangements (including, in particular, those relating to the independent and effective exercise of its regulatory functions), or
 - (b) comply with a direction given in accordance with schedule 2.

Power to impose penalty

- 2 (1) The Scottish Ministers may impose on the approved regulator a penalty, in respect of a failure mentioned in paragraph 1, of an amount not exceeding the prescribed maximum.
- (2) Here, the prescribed maximum is the maximum amount that is prescribed in regulations made by the Scottish Ministers for the purpose of this paragraph.
- (3) A financial penalty imposed under this paragraph is payable to the Scottish Ministers.

Amount of penalty

- 3 (1) When considering the appropriate amount of a penalty to be imposed under paragraph 2, the Scottish Ministers must have regard to—
- (a) the seriousness of the failure,
 - (b) the nature of the failure in other respects.
- (2) It is material for the purpose of sub-paragraph (1)—
- (a) whether the failure was deliberate,
 - (b) if the failure is attributable to recklessness or negligence, the degree involved.
- (3) The Scottish Ministers may consult such person or body as they consider appropriate when considering—
- (a) whether to impose a penalty,
 - (b) the appropriate amount of the penalty.

Notice of intention

- 4 (1) Before imposing a financial penalty, the Scottish Ministers must give the approved regulator a notice (a “notice of intention”) of their intention to do so.
- (2) The notice of intention must—
- (a) state—
 - (i) that the Scottish Ministers intend to impose a financial penalty,
 - (ii) the amount of the proposed penalty,
 - (b) by reference to the failure concerned and any other relevant facts, explain why the Scottish Ministers consider that—
 - (i) it is appropriate to impose a penalty,
 - (ii) the amount of the proposed penalty is appropriate.

Consultation

- 5 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed penalty.
- (2) The Scottish Ministers must—
- (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,
 - (b) give a copy of that notice, and a copy of any representations received from the approved regulator, to any person whom or body that they consult under sub-paragraph (3).
- (3) After the expiry of the period for representations, the Scottish Ministers may consult such person or body as they consider appropriate about the appropriateness of—
- (a) imposing the penalty,
 - (b) its amount.

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Decision

- 6 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, and any consultee under paragraph 5(3), when deciding whether to proceed with imposing the penalty.
- (2) The Scottish Ministers must—
- (a) give a notice to the approved regulator (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 5(3) of their decision,
 - (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
- (3) The decision notice must—
- (a) state whether or not a financial penalty is being imposed,
 - (b) give the reason for the imposition (or otherwise) of a penalty,
 - (c) if a penalty is being imposed—
 - (i) state the amount of the penalty (and mention any allowance made for payment by instalments),
 - (ii) explain why the Scottish Ministers consider that amount to be appropriate,
 - (iii) specify the date by which the penalty requires to be paid in full.
- (4) That date must not be within the 3 months beginning with the day on which the decision notice is given to the approved regulator (but this does not preclude earlier payment at the initiative of the approved regulator).
- (5) For the purpose of this schedule, relevant persons or bodies include—
- (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

Variation of penalty

- 7 (1) The Scottish Ministers may, on an application from an approved regulator received within 21 days beginning with the day on which the decision notice is given to the approved regulator—
- (a) vary the date by which the penalty requires to be paid,
 - (b) allow for the penalty to be paid by—
 - (i) instalments (if not already allowed), or
 - (ii) different instalments (if allowed).
- (2) Where an application is made under sub-paragraph (1), no part of the penalty is required to be paid before the Scottish Ministers notify the approved regulator of their determination of the application.

Appeal

- 8 (1) An approved regulator on which a financial penalty is imposed under paragraph 2 may appeal to the Court of Session against the penalty on one or more of the appeal grounds.

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- (2) On an appeal under this paragraph—
- (a) the Court may—
 - (i) uphold, vary or quash the decision that is the subject of the appeal,
 - (ii) make such further order as is necessary in the interests of justice,
 - (b) the Court’s determination is final.

Appeal grounds

- 9 The grounds for an appeal under paragraph 8 are—
- (a) that, in the circumstances of the case—
 - (i) it was not appropriate to impose the penalty, or
 - (ii) the amount of the penalty is excessive,
 - (b) that the date specified under paragraph 6(3)(c)(iii) is unreasonable,
 - (c) that the other arrangements for payment are unreasonable, including—
 - (i) the absence of any provision for payment by instalments, or
 - (ii) any provision for payment by instalments that has been allowed,
 - (d) that—
 - (i) the penalty was imposed otherwise than in accordance with this schedule, and
 - (ii) the approved regulator’s interests have been substantially prejudiced as a result.

Time for appeal

- 10 (1) An appeal under paragraph 8 is to be made—
- (a) within the 3 months beginning with the day on which the decision notice is given to the approved regulator, or
 - (b) where the ground of appeal is referable to something done under paragraph 7(1), within the 3 months beginning with the day on which the approved regulator is notified of the thing done.
- (2) Where an appeal is made under paragraph 8, no part of the penalty requires to be paid before the appeal is determined or withdrawn.

Interest

- 11 (1) If the whole or part of a penalty is not paid as required in accordance with this schedule the unpaid amount carries interest at the prescribed rate.
- (2) Here, the prescribed rate is the rate that is prescribed in regulations made by the Scottish Ministers for the purpose of this paragraph.

Default

- 12 (1) Sub-paragraph (2) applies where the whole or part of a penalty is not paid as required in accordance with this schedule.
- (2) The Scottish Ministers may recover from the approved regulator, as a debt due to them—
- (a) the penalty or (as the case may be) the part of it, and

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- (b) the interest that it carries.

SCHEDULE 5

(introduced by section 38(3))

AMENDMENT OF AUTHORISATION

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that—
- (a) an act or omission of an approved regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, and
 - (b) the matter cannot be addressed adequately by the Scottish Ministers taking any of the measures mentioned in section 38(4)(a) to (d).

Power to amend

- 2 (1) The Scottish Ministers may amend the authorisation of the approved regulator (given under section 10).
- (2) In particular, the Scottish Ministers may—
- (a) impose restrictions as respects the authorisation by reference to particular categories of—
 - (i) licensed provider,
 - (ii) legal services,
 - (b) alter the duration of the authorisation (including by imposing a limit of time),
 - (c) impose new conditions, or vary any existing conditions, to which the authorisation is subject.

Notice of intention

- 3 (1) Before amending the approved regulator's authorisation, the Scottish Ministers must give it a notice (a "notice of intention") of their intention to do so.
- (2) The notice of intention must—
- (a) state that the Scottish Ministers intend to amend the approved regulator's authorisation,
 - (b) specify the proposed amendments to the authorisation, and
 - (c) explain why they are satisfied as mentioned in paragraph 1.

Consultation

- 4 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed amendments.
- (2) The Scottish Ministers must—

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- (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,
 - (b) give a copy of the notice of intention to—
 - (i) the OFT,
 - (ii) such other person or body as they consider appropriate,
 - (c) after the expiry of the period for representations—
 - (i) give the recipients under paragraph (b) a copy of any representations received from the approved regulator,
 - (ii) consult them accordingly in relation to the proposed amendments.
- (3) When consulted under sub-paragraph (2)(c), the Lord President is to—
- (a) give the Scottish Ministers such advice in respect of the proposed amendments as the Lord President thinks fit,
 - (b) in deciding what advice to give, have regard (in particular) to the likely impact of the proposed amendments on the operation of the Scottish courts.
- (4) For the purpose of sub-paragraph (3)—
- (a) the approved regulator, or
 - (b) any other person who holds information relevant in relation to proposed amendments,
- must provide the Lord President with such information about the proposed amendments (or their likely consequences) as the Lord President may reasonably require.

Decision

- 5
- (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 4(2)(c), when deciding whether to proceed with amending the authorisation.
 - (2) The Scottish Ministers must—
 - (a) give a notice of their decision (a “decision notice”) to the approved regulator,
 - (b) give reasons in the decision notice for their decision,
 - (c) notify the consultees under paragraph 4(2)(c) of their decision,
 - (d) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
 - (3) If the Scottish Ministers decide to amend the authorisation, the decision notice must specify the date from which the amendments are to be effective (which may be the date on which that notice is given).
 - (4) For the purposes of this schedule, relevant persons or bodies include—
 - (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

Status: This is the original version (as it was originally enacted).

SCHEDULE 6

(introduced by section 38(3))

RESCISSION OF AUTHORISATION

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that—
- (a) an act or an omission of an approved regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives, and
 - (b) the matter cannot be adequately addressed by the Scottish Ministers taking any of the measures mentioned in section 38(4)(a) to (e).

Power to rescind

- 2 The Scottish Ministers may rescind the authorisation of the approved regulator (given under section 10).

Notice of intention

- 3 (1) Before rescinding the approved regulator's authorisation, the Scottish Ministers must give it a notice (a "notice of intention") of their intention to do so.
- (2) The notice of intention must—
- (a) state that the Scottish Ministers intend to rescind the approved regulator's authorisation,
 - (b) explain why they are satisfied as mentioned in paragraph 1.

Consultation

- 4 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed rescission.
- (2) The Scottish Ministers must—
- (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,
 - (b) give a copy of the notice of intention to—
 - (i) the OFT,
 - (ii) such other person or body as they consider appropriate,
 - (c) after the expiry of the period for representations, the Scottish Ministers must—
 - (i) give the recipients under paragraph (b) a copy of any representations received from the approved regulator,
 - (ii) consult them accordingly in relation to the proposed rescission.

Decision

- 5 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 4(2)(c), when deciding whether to proceed with rescinding the authorisation.
- (2) The Scottish Ministers must—
- (a) give a notice of their decision (a “decision notice”) to the approved regulator,
 - (b) give reasons in the decision notice for their decision,
 - (c) notify the consultees under paragraph 4(2)(c) of their decision,
 - (d) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
- (3) If the Scottish Ministers decide to rescind the authorisation, the decision notice must—
- (a) specify the date from which the rescission is to be effective (which may be the date on which that notice is given),
 - (b) state, for the purpose of section 38(5), whether or not the approval of the approved regulator (given under section 7) is preserved.
- (4) For the purposes of this schedule, relevant persons or bodies include—
- (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

SCHEDULE 7

(introduced by section 39(2))

SURRENDER OF AUTHORISATION

Application

- 1 This schedule applies where an approved regulator proposes to surrender its authorisation under section 39.

Surrender notice

- 2 (1) The approved regulator must give the Scottish Ministers a notice (a “surrender notice”) of its proposal to do so.
- (2) The notice must—
- (a) specify the approved regulator’s reasons for proposing to surrender its authorisation,
 - (b) be published (by the approved regulator) in such manner as the approved regulator considers most appropriate for bringing it to the attention of any relevant person or body.

Consultation

- 3 (1) The Scottish Ministers must, as soon as reasonably practicable after receipt of a surrender notice—
- (a) send a copy of the notice to—
 - (i) the Lord President,
 - (ii) the OFT,
 - (iii) each of the approved regulator’s licensed providers,
 - (iv) such other person or body as they consider appropriate,
 - (b) consult them accordingly.
- (2) The consultees under sub-paragraph (1) have 6 weeks beginning with the day on which they are sent the copy of the notice to make representations to the Scottish Ministers about the proposed surrender.
- (3) When consulted under sub-paragraph (1), the Lord President is to—
- (a) give the Scottish Ministers such advice in respect of the proposed surrender as the Lord President thinks fit,
 - (b) in deciding what advice to give, have regard to the likely impact of the proposed surrender on the operation of the Scottish courts.
- (4) For the purpose of sub-paragraph (3)—
- (a) the approved regulator, or
 - (b) any other person who holds information relevant to the proposed surrender, must provide the Lord President with such information about the proposed surrender (or its likely consequences) as the Lord President may reasonably require.

Decision

- 4 (1) The Scottish Ministers must, within 28 days beginning with the day after the period mentioned in paragraph 3(2) ends, decide whether to agree to the proposed surrender.
- (2) In making their decision, the Scottish Ministers must have regard to—
- (a) any advice given to them by the Lord President,
 - (b) any representations made to them by the other consultees under paragraph 3(1),
 - (c) any further representation made to them by the approved regulator.
- (3) The Scottish Ministers must—
- (a) send to the approved regulator a notice (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 3(1) of their decision,
 - (c) publish the decision notice in such manner as they consider appropriate for bringing it to the attention of any relevant person or body.
- (4) For the purpose of this schedule, relevant persons or bodies include—
- (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

Date of surrender

- 5 (1) If the Scottish Ministers agree to the surrender of the authorisation, the decision notice must specify the date from which the surrender is to be effective (which must be within the period of 6 months beginning with the date of the decision notice).
- (2) That date—
- (a) is to be fixed having taken account of the wishes of the approved regulator,
 - (b) must allow a reasonable amount of time for the carrying out of such transitional arrangements as are necessary in connection with the surrender.

SCHEDULE 8

(introduced by section 67(1))

INVESTORS IN LICENSED PROVIDERS

Initial notification requirements

- 1 (1) An applicant for a licence (issuable in accordance with an approved regulator's licensing rules) must give the approved regulator the standard information about non-solicitor investors when applying for the licence.
- (2) The applicant must also—
- (a) give (as soon as practicable) the approved regulator any standard information subsequently coming to light,
 - (b) notify (as soon as practicable) the approved regulator of any other change in the standard information.
- (3) The standard information is—
- (a) the name and other details of—
 - (i) every non-solicitor investor in the applicant,
 - (ii) any other person whom the applicant expects to be a non-solicitor investor in the applicant at such time as the licence may be issued,
 - (b) in each case, a description of the nature of the person's interest.
- 2 (1) It is an offence for a person to fail to comply with a requirement imposed on the person by paragraph 1.
- (2) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) It is a defence for a person prosecuted for an offence under sub-paragraph (1) to show that at the relevant time the person had no knowledge, and could not reasonably be expected to have knowledge, of the information in question.

Continuing notification requirements

- 3 (1) This paragraph applies where—
- (a) a person takes, or proposes to take, a step to acquire such an interest as would result in the person becoming a non-solicitor investor in a licensed provider,
 - (b) a non-solicitor investor takes, or proposes to take, a step which would—

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- (i) significantly change the investor’s interest in the licensed provider,
or
- (ii) acquire an additional kind of interest in the licensed provider, or
- (c) a person becomes a non-solicitor investor in a licensed provider—
 - (i) as a new investor, or
 - (ii) because the person, having ceased to be entitled to practise as mentioned in section 67(6)(b) (while remaining as an investor), comes within the definition there.
- (2) In a case falling within sub-paragraph (1)(a) or (b), the licensed provider must (as soon as practicable) notify the approved regulator of the proposal including by giving it—
 - (a) the name and other details of the person concerned,
 - (b) the details of the interest concerned.
- (3) In a case falling within sub-paragraph (1)(c)(i), the licensed provider must (as soon as practicable) notify the approved regulator of the acquisition including by giving it the name and other details of the investor.
- (4) In a case falling within sub-paragraph (1)(c)(ii), the licensed provider must (as soon as practicable) notify the approved regulator of the fact.
- (5) Sub-paragraph (3) does not apply where sub-paragraph (2) has been complied with in relation to the acquisition.
- (6) It is an offence for a person to fail to comply with a requirement imposed on the person by sub-paragraph (2), (3) or (4).
- (7) A person who commits an offence under sub-paragraph (6) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) It is a defence for a person prosecuted for an offence under sub-paragraph (6) to show that at the relevant time the person had no knowledge, and could not reasonably be expected to have knowledge, of the information in question.

Exemption from notification requirements

- 4 (1) An approved regulator may in relation to any exemptible investor in a licensed provider waive the requirements to give it information (or notification) under paragraphs 1 and 3.
- (2) Licensing rules must explain—
 - (a) any circumstances in which the approved regulator proposes to rely on sub-paragraph (1),
 - (b) any threshold below the percentage specified in sub-paragraph (3) by reference to which it proposes to rely on sub-paragraph (1),
 - (c) where it proposes to rely on sub-paragraph (1), its reasons.
- (3) In sub-paragraph (1), an “exemptible investor” is (as the case may be)—
 - (a) an investor who has less than a 10% stake in the total ownership or control of the licensed provider, or
 - (b) a person whose intended acquisition of an interest in the licensed provider is of less than a 10% stake in the total ownership or control of the licensed provider.

Requirement to notify investors

- 5 (1) Where an applicant gives information under paragraph 1, the applicant must notify any person whom the information concerns—
- (a) of—
 - (i) the making of the application, and
 - (ii) the fact that the identity of the person has been disclosed to the approved regulator,
 - (b) of the effect of paragraph 6.
- (2) Where a licensed provider gives notification under paragraph 3(2) or (3), the licensed provider must notify any person whom the notification concerns—
- (a) of—
 - (i) the giving of that notification, and
 - (ii) the fact that the identity of the person has been disclosed to the approved regulator,
 - (b) of the effect of paragraph 6.
- (3) It is an offence for a person to fail without reasonable excuse to comply with a requirement imposed on the person by sub-paragraph (1) or (2).
- (4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Approved regulator may obtain information

- 6 (1) An approved regulator may require a person whose identity has been disclosed to it under paragraph 1 or 3 to provide it with such documents and other information as it may reasonably require.
- (2) It is an offence for a person who is required to provide information by virtue of sub-paragraph (1)—
- (a) to fail without reasonable excuse to comply with the requirement, or
 - (b) knowingly to provide false or misleading information.
- (3) A person who commits an offence under sub-paragraph (2) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment to a term of imprisonment not exceeding 2 years or a fine (or both).

SCHEDULE 9

(introduced by section 149(4))

INDEX OF EXPRESSIONS USED

<i>Whole Act expressions</i>	<i>Relevant provisions</i>
particular expressions	all in Part 1
regulatory objectives	
professional principles	

Status: This is the original version (as it was originally enacted).

<i>Whole Act expressions</i>	<i>Relevant provisions</i>
legal services	
other expressions	all in section 149(1) to (3)
the 1980 Act, the 1986 Act, the 1990 Act & the 2007 Act	
advocate	
conveyancing practitioner	
executry practitioner	
Faculty	
incorporated practice	
Law Society	
litigation practitioner	
Lord President	
OFT	
professional association or body	
egistered European lawyer	
registered foreign lawyer	
solicitor	
<i>Part 2 expressions</i>	<i>Relevant provisions</i>
approved regulator (of licensed provider)	section 6
approval and authorisation (of approved regulator)	sections 7 and 10
designated person (within licensed provider)	section 59
Head of Legal Services, Head of Practice and Practice Committee (of licensed provider)	sections 51 to 53
internal governance arrangements (of approved regulator)	section 27
investor, non-solicitor investor and solicitor investor (in licensed provider)	section 67
licensed legal services provider (and licensed provider)	section 47
licensing and practice rules (in regulatory scheme)	sections 14 and 18
regulatory and representative functions (of approved regulator)	section 30
regulatory scheme (of approved regulator)	section 12

Status: This is the original version (as it was originally enacted).

<i>Part 3 expressions</i>	<i>Relevant provisions</i>
approving body (of confirmation agent)	section 91
approving body (of will writer)	section 102
confirmation agent and confirmation services	section 90
regulatory scheme (of approving body)	sections 93 and 104
will writer and will writing services	section 101
