

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the Regulatory Objectives Etc.

Section 1 – Regulatory objectives

Section 2 – Professional principles

12. *Section 1* provides for the regulatory objectives which the Scottish Ministers, approved regulators, approving bodies, and other regulators of legal services must comply with and promote in exercising their functions. Sections 4 and 5 set out the responsibilities of the Scottish Ministers in relation to the regulatory objectives. Section 77 does the same for approved regulators, section 93 for approving bodies for confirmation agents, section 104 for approving bodies of non-lawyer will writers, and section 119 for other legal services regulators.
13. The regulatory objectives include promoting and maintaining adherence to the professional principles (set out in section 2). There are eight such principles to which persons providing legal services should adhere. These principles do not differ substantially from the professional principles by which solicitors and other legal professionals act, and are intended to ensure that the current standard of quality in the delivery of legal services is safeguarded. Licensed providers would be expected to “act in the best interests of their clients (and keep clients’ affairs confidential)” meaning that they should, for example, avoid conflicts of interest and safeguard a client’s money and property. Licensed providers would be expected to maintain good standards of work, meaning that they should act competently, communicate effectively, be diligent and show respect and courtesy. Under section 50, licensed providers must have regard to the regulatory objectives and adhere to the professional principles. The Head of Legal Services is responsible for securing that adherence (section 51(5)(b)).
14. The regulatory objectives also include encouraging equal opportunities within the legal profession. While equal opportunities is a topic which is generally reserved to the UK Government (Section L2 of Part II of Schedule 5 to the Scotland Act 1998), there is an exception to this and that is the encouragement of equal opportunities, and in particular of the observance of the equal opportunity requirements. The Scottish Parliament may impose duties on the Scottish Government and Scottish public bodies to make arrangements to secure that their functions are carried out with due regard to the need to meet the equal opportunity requirements.
15. The Act does not rank these objectives or the principles in order of importance, so there is no hierarchy within them. The Scottish Ministers, the approved regulators and the other legal service regulators (see section 119(2)) will need to consider how they balance these competing objectives in any particular circumstances.