



# Legal Services (Scotland) Act 2010

## 2010 asp 16

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 6th October 2010 and received Royal Assent on 9th November 2010**

An Act of the Scottish Parliament to allow and to make provision for regulating the supply of certain legal services by licensed entities; to extend rights to obtain confirmation to the estates of deceased persons; to regulate will and other testamentary writing by non-lawyers; to make provision concerning the Law Society of Scotland and the Faculty of Advocates and for the professional arrangements to which solicitors and advocates are subject; to allow court rules to permit the making of oral submissions by lay representatives in civil cases; and for connected purposes.

VALID FROM 01/04/2011

### PART 1

#### THE REGULATORY OBJECTIVES ETC.

##### *Introduction*

#### **1 Regulatory objectives**

For the purposes of this Act, the regulatory objectives are the objectives of—

- (a) supporting—
  - (i) the constitutional principle of the rule of law,
  - (ii) the interests of justice,
- (b) protecting and promoting—
  - (i) the interests of consumers,
  - (ii) the public interest generally,
- (c) promoting—
  - (i) access to justice,
  - (ii) competition in the provision of legal services,
- (d) promoting an independent, strong, varied and effective legal profession,

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- (e) encouraging equal opportunities (as defined in Section L2 of Part II of Schedule 5 to the Scotland Act 1998) within the legal profession,
- (f) promoting and maintaining adherence to the professional principles.

## 2 Professional principles

For the purposes of this Act, the professional principles are the principles that persons providing legal services should—

- (a) support the proper administration of justice,
- (b) act with independence (in the interests of justice),
- (c) act with integrity,
- (d) act in the best interests of their clients (and keep clients' affairs confidential),
- (e) maintain good standards of work,
- (f) where—
  - (i) exercising before any court a right of audience, or
  - (ii) conducting litigation in relation to proceedings in any court,
 comply with such duties as are normally owed to the court by such persons,
- (g) meet their obligations under any relevant professional rules,
- (h) act in conformity with professional ethics.

## 3 Legal services

- (1) For the purposes of this Act, legal services are services which consist of (at least one of)—
- (a) the provision of legal advice or assistance in connection with—
    - (i) any contract, deed, writ, will or other legal document,
    - (ii) the application of the law, or
    - (iii) any form of resolution of legal disputes,
  - (b) the provision of legal representation in connection with—
    - (i) the application of the law, or
    - (ii) any form of resolution of legal disputes.
- (2) But, for those purposes, legal services do not include—
- (a) judicial activities,
  - (b) any other activity of a judicial nature,
  - (c) any activity of a quasi-judicial nature (for example, acting as a mediator).
- (3) In subsection (1)(a)(iii) and (b)(ii), “legal disputes” includes disputes as to any matter of fact the resolution of which is relevant to determining the nature of any person's legal rights or obligations.

### *Role of Ministers*

## 4 Ministerial oversight

- (1) Subsections (2) and (3) apply in relation to the exercise by the Scottish Ministers of their functions—
- (a) under Parts 2 and 3, or

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- (b) under section 125(3) or otherwise arising by virtue of Part 4 (except sections 141(c) and 145(1)).
- (2) The Scottish Ministers must, so far as practicable, act in a way which—
  - (a) is compatible with the regulatory objectives, and
  - (b) they consider most appropriate with a view to meeting those objectives.
- (3) The Scottish Ministers must adopt best regulatory practice under which (in particular) regulatory activities should be—
  - (a) carried out—
    - (i) effectively (but without giving rise to unnecessary burdens),
    - (ii) in a way that is transparent, accountable, proportionate and consistent,
  - (b) targeted only at such cases as require action.

## **5 Consultation by Ministers**

- (1) Subsection (2) applies in relation to the exercise by the Scottish Ministers of their functions—
  - (a) under Parts 2 and 3, or
  - (b) under section 125(3) or otherwise arising by virtue of Part 4 (except sections 141(c) and 145(1)).
- (2) Where (and to the extent that) the Scottish Ministers consider it appropriate to do so in the case of an individual function, they must consult such persons or bodies as appear to them to have a significant interest in the particular subject-matter to which the exercise of the function relates.
- (3) The general requirement to consult under subsection (2) has effect in conjunction with, or in the absence of, any particular consultation requirement to which the Scottish Ministers are subject in a specific (and relevant) context.

VALID FROM 01/04/2011

## **PART 2**

### REGULATION OF LICENSED LEGAL SERVICES

## **CHAPTER 1**

### APPROVED REGULATORS

#### *Approved regulators*

## **6 Approved regulators**

- (1) For the purposes of this Part, an approved regulator is a professional or other body which is approved as such by the Scottish Ministers under section 7.

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- (2) That is, following an application to them by the body under subsection (3).
- (3) An application to become an approved regulator must include—
- (a) a copy of the applicant's proposed regulatory scheme (see section 7(1)(c)),
  - (b) a copy of its proposed statement of policy under section 78(1),
  - (c) a description of—
    - (i) the applicant's constitution and composition (including internal structure),
    - (ii) its internal governance arrangements,
    - (iii) its representative functions (if any),
    - (iv) its other activities (if any).
- (4) The applicant—
- (a) must provide the Scottish Ministers with such other information as they may reasonably require for their (or the Lord President's) consideration of its application,
  - (b) may withdraw its application at any time by giving them written notice to that effect.
- (5) No more than 3 approved regulators may exist at any time.
- (6) The Scottish Ministers may—
- (a) with the agreement of the Lord President, and
  - (b) after consulting such other person or body as they consider appropriate,
- by regulations amend the number specified in subsection (5).
- (7) The Scottish Ministers may by regulations prescribe fees that they may charge—
- (a) an applicant to become an approved regulator,
  - (b) approved regulators.

## **7 Approval of regulators**

- (1) The Scottish Ministers may approve the applicant as an approved regulator if they are satisfied that—
- (a) for regulating licensed legal services providers in accordance with this Part, the applicant has—
    - (i) the necessary expertise as regards the provision of legal services (including as deriving from that of the persons within it),
    - (ii) a thorough understanding of the application of the regulatory objectives and the professional principles,
    - (iii) sufficient resources (financial and otherwise),
    - (iv) the capability in other respects,
  - (b) the applicant will always exercise its regulatory functions—
    - (i) independently of any other person or interest,
    - (ii) properly in other respects (in particular, with a view to achieving public confidence),
  - (c) the applicant's proposed regulatory scheme is adequate (as determined with particular reference to section 12),
  - (d) the applicant's internal governance arrangements are, or will be, suitable (as determined with particular reference to section 27).

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- (2) The Scottish Ministers may give their approval subject to conditions.
- (3) Their approval may be given—
  - (a) with restrictions imposed by reference to particular categories of—
    - (i) licensed providers,
    - (ii) legal services,
  - (b) either—
    - (i) without limit of time, or
    - (ii) for a fixed period of at least 3 years.
- (4) The Scottish Ministers may, after consulting the approved regulator, vary (including by addition or deletion) any conditions or restrictions imposed under subsection (2) or (3).
- (5) The Scottish Ministers may by regulations make further provision about approval under this section, including (in particular)—
  - (a) the process for seeking their approval,
  - (b) in relation to capability to act as an approved regulator, the criteria for their approval (including things that applicants must be able to demonstrate).
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.

## **8 Pre-approval consideration**

- (1) Before deciding whether or not to approve the applicant as an approved regulator under section 7, the Scottish Ministers must consult—
  - (a) the Lord President,
  - (b) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
  - (c) such other person or body as they consider appropriate.
- (2) In consulting under subsection (1), the Scottish Ministers—
  - (a) must send a copy of the application to the consultees,
  - (b) may send a copy of any revised application to any (or all) of them.
- (3) The Scottish Ministers must, with reasons, notify the applicant if they intend to—
  - (a) refuse to approve it as an approved regulator, or
  - (b) impose conditions or restrictions under section 7(2) or (3).
- (4) If notification is given to the applicant under subsection (3), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
  - (a) make representations to the Scottish Ministers,
  - (b) take such steps as it may consider expedient.

## **9 Lord President's agreement**

- (1) Despite section 7(1), the Scottish Ministers must not approve the applicant as an approved regulator unless the Lord President agrees to its being approved as such.

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- (2) The Scottish Ministers are to impose under section 7(2) such particular conditions relating to the expertise mentioned in section 7(1)(a)(i) as are reasonably sought by the Lord President when (and if) notifying them of the Lord President's agreement for the purpose of subsection (1).
- (3) The Lord President's agreement is required for—
  - (a) the imposition of any—
    - (i) conditions under section 7(2) (apart from conditions to which subsection (2) relates),
    - (ii) restrictions under section 7(3),
  - (b) the variation of any such conditions or restrictions under section 7(4).

## **10 Authorisation to act**

- (1) An approved regulator may not exercise any of its regulatory functions unless it is authorised to do so by the Scottish Ministers under this section.
- (2) The Scottish Ministers may give their authorisation if they are satisfied (or continue to be satisfied)—
  - (a) as mentioned in subsection (1) of section 7,
  - (b) as regards any criteria provided for under subsection (5)(b) of that section.
- (3) Their authorisation may be given with restrictions imposed by reference to particular categories of—
  - (a) licensed provider,
  - (b) legal services.
- (4) Their authorisation may be given—
  - (a) either—
    - (i) without limit of time, or
    - (ii) for a fixed period of at least 3 years,
  - (b) subject to conditions.
- (5) The Scottish Ministers may, after consulting the approved regulator, vary (including by addition or deletion) any restrictions or conditions imposed under subsection (3) or (4)(b).
- (6) The Scottish Ministers may by regulations make further provision about authorisation under this section including (in particular) the process for requests for their authorisation.

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## **11 Request for authorisation**

- (1) A request for authorisation under section 10 may be—
  - (a) made at any reasonable time (including at the same time as applying for approval under section 7),
  - (b) withdrawn by the approved regulator (or applicant) at any time by giving the Scottish Ministers written notice to that effect.

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- (2) The Scottish Ministers must, with reasons, notify the approved regulator (or applicant) if they intend to—
  - (a) withhold their authorisation, or
  - (b) impose conditions under section 10(4)(b).
- (3) If notification is given to the approved regulator (or applicant) under subsection (2), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
  - (a) make representations to the Scottish Ministers,
  - (b) take such steps as it may consider expedient.
- (4) The approved regulator (or applicant) must provide the Scottish Ministers with such information as they may reasonably require for their consideration of its request for their authorisation.
- (5) In section 10 and this section, a reference to authorisation means initial or renewed authorisation.

### *Regulatory schemes*

## **12 Regulatory schemes**

- (1) An approved regulator must—
  - (a) make a regulatory scheme for licensing and regulating the provision of legal services by its licensed legal services providers, and
  - (b) apply the scheme in relation to them.
- (2) The regulatory scheme is to—
  - (a) contain—
    - (i) the licensing rules (see section 14),
    - (ii) the practice rules (see section 18),
    - (iii) the compensation rules (see sections 25 and 26(1)),
  - (b) include provision for reconciling different sets of regulatory rules (see section 13),
  - (c) cover such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as the regulations may specify).
- (3) The regulatory scheme may—
  - (a) relate to—
    - (i) one or more categories of licensed provider,
    - (ii) some or all legal services,
  - (b) make different provision for different cases or types of case.
- (4) An approved regulator may amend its regulatory scheme (or any aspect of it), but—
  - (a) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,
  - (b) the Scottish Ministers may not give their approval without—
    - (i) the Lord President's agreement, and
    - (ii) consulting such other person or body as they consider appropriate.

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- (5) The Scottish Ministers may by regulations—
- (a) confer authority for the regulatory schemes of approved regulators to deal with the provision by their licensed providers of such other services (in addition to legal services) as the regulations may prescribe, and
  - (b) specify the extent to which (and the manner in which) the regulatory schemes may do so.

### **13 Reconciling different rules**

- (1) The provision required by section 12(2)(b) to be in the regulatory scheme is such provision as is reasonably practicable (and appropriate in the circumstances) for—
  - (a) preventing or resolving regulatory conflicts, and
  - (b) avoiding unnecessary duplication of regulatory rules.
- (2) For the purposes of this section, a regulatory conflict is a conflict between—
  - (a) the regulatory scheme of an approved regulator, and
  - (b) any professional or regulatory rules made by any other body which regulates the provision of legal or other services.
- (3) The Scottish Ministers may by regulations make further provision about regulatory conflicts (such as may involve an approved regulator).
- (4) Before making regulations under subsection (3), the Scottish Ministers must have the Lord President's agreement.

#### *Licensing rules*

### **14 Licensing rules: general**

- (1) For the purposes of this Part, the licensing rules are rules about—
  - (a) the procedure for becoming a licensed provider, including (in particular)—
    - (i) the making of applications,
    - (ii) the criteria to be met by applicants,
    - (iii) the determination of applications,
    - (iv) the issuing of licences,
  - (b) the terms of licences and attaching to licences of conditions or restrictions,
  - (c) the—
    - (i) renewal of licences,
    - (ii) circumstances in which licences may be revoked or suspended,
  - (d) licensing provision affecting non-solicitor investors in licensed providers,
  - (e) licensing fees that are chargeable by the approved regulator.
- (2) Rules made in pursuance of subsection (1)(a) to (c) must allow for review by the approved regulator of any decision made by it under the rules that materially affects an applicant for a licence or (as the case may be) a licensed provider.
- (3) Licensing rules may include such further licensing arrangements as to licensed providers for which provision is (in the approved regulator's opinion) necessary or expedient.



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- (4) See also sections 55(6)(b), 57(4), 62(2), 63(3) and 67(2)(b) and paragraph 4(2) of schedule 8 (as well as sections 15 and 16).

## 15 Initial considerations

- (1) Licensing rules must provide for—
- (a) consultation with the OFT, where appropriate in accordance with subsection (2), in relation to a licence application,
  - (b) how the approved regulator is to deal with a licence application where it believes that granting it would cause (directly or indirectly) a material and adverse effect on the provision of legal services.
- (2) For the purpose of subsection (1)(a), it is appropriate to consult the OFT where the approved regulator believes that the granting of the licence application may have the effect of—
- (a) preventing competition within the legal services market, or
  - (b) significantly restricting or distorting such competition.

## 16 Other licensing rules

- (1) Licensing rules may allow for—
- (a) an applicant to be issued with a provisional licence—
    - (i) in anticipation of its becoming (or becoming eligible to be) a licensed provider, and
    - (ii) whose full effect as a licence is conditional on its becoming a licensed provider (and such other relevant matters as the rules may specify), or
  - (b) a licensed provider to be issued with a provisional licence—
    - (i) in anticipation of its transferring to the regulation of the approved regulator, and
    - (ii) whose full effect as a licence is conditional on the transfer occurring (and such other relevant matters as the rules may specify).
- (2) Licensing rules must—
- (a) state that a licence application may be refused on the ground that the applicant appears to be incapable (for any reason) of complying with the regulatory scheme,
  - (b) provide for grounds for non-renewal, revocation or suspension of a licence where the licensed provider is breaching (or has breached) the regulatory scheme.

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## 17 Licensing appeals

- (1) An applicant for a licence or (as the case may be) a licensed provider may appeal against a relevant licensing decision taken by virtue of this Part—
- (a) to the sheriff,

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- (b) within the period of 3 months beginning with the date on which that decision is intimated to it.
- (2) A relevant licensing decision is a decision to—
- (a) refuse the licensed provider's application for—
    - (i) a licence, or
    - (ii) renewal of its licence,
  - (b) attach conditions or restrictions to its licence, or
  - (c) revoke or suspend its licence.

### *Practice rules*

#### **18 Practice rules: general**

- (1) For the purposes of this Part, the practice rules are rules about—
- (a) the—
    - (i) operation and administration of licensed providers,
    - (ii) standards to be met by licensed providers,
  - (b) the operational positions within licensed providers,
  - (c) accounting and auditing (see section 22),
  - (d) professional indemnity (see section 23),
  - (e) the making and handling of any complaint about—
    - (i) a licensed provider,
    - (ii) a designated or other person within a licensed provider,
  - (f) the measures that may be taken by the approved regulator, in relation to a licensed provider, if—
    - (i) there is a breach of the regulatory scheme, or
    - (ii) a complaint referred to in paragraph (e) is upheld.
- (2) Rules made in pursuance of subsection (1)(f) must allow a licensed provider to make representations to the approved regulator before it takes any of the measures available to it under the rules.
- (3) Practice rules may include such further arrangements as to the professional practice, conduct or discipline of licensed providers for which provision is (in the approved regulator's opinion) necessary or expedient.
- (4) See also sections 55(6)(a), 57(5) and 65(4) (as well as sections 19 to 23).

#### **19 Financial sanctions**

- (1) Practice rules made in pursuance of section 18(1)(f) may provide for the imposition of a financial penalty.
- (2) A financial penalty provided for by virtue of subsection (1) must not exceed the maximum amount permitted by the Scottish Ministers when giving their approval under section 7.
- (3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the approved regulator may collect it on their behalf).

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- (4) A licensed provider may appeal against a financial penalty (or the amount of a financial penalty) imposed on it by virtue of this section—
- (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the penalty is intimated to it.
- (5) Where an appeal is made under subsection (4), no part of the penalty requires to be paid before the appeal is determined or withdrawn.

## **20 Enforcement of duties**

- (1) Practice rules must include provision that it is a breach of the regulatory scheme for a licensed provider to—
- (a) fail to comply with section 50, or
  - (b) fail to comply with its—
    - (i) other duties under this Part, or
    - (ii) duties under any other enactment specified in the scheme.
- (2) Practice rules must require a licensed provider to—
- (a) review and report on its performance (see section 21), and
  - (b) have its performance and that report assessed by the approved regulator.

## **21 Performance report**

- (1) Practice rules made by reference to section 20(2)(a) are (in particular) to give the Head of Practice of a licensed provider the functions of—
- (a) carrying out an annual review, and
  - (b) sending a report (in a specified form) on the review to the approved regulator.
- (2) The review must include an examination of—
- (a) the licensed provider's compliance with section 50(1), and
  - (b) the involvement of any non-solicitor investors in the licensed provider.
- (3) Practice rules made by reference to section 20(2)(b) may describe the approved regulator's functions under section 31.

## **22 Accounting and auditing**

Practice rules must—

- (a) require licensed providers to keep in place proper accounting and auditing procedures,
- (b) include provision corresponding to that applying under sections 35 to 37 (accounts rules) of the 1980 Act in relation to an incorporated practice.

## **23 Professional indemnity**

Practice rules must—

- (a) require licensed providers to keep in place sufficient arrangements for professional indemnity,

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- (b) include provision corresponding to that applying under section 44 (professional indemnity) of the 1980 Act in relation to an incorporated practice.

### *Compensation arrangements*

#### **24 Choice of arrangements**

- (1) An approved regulator must proceed with either option A or option B as regards a compensation fund from which to make good such relevant losses as may be suffered by reason of dishonesty on the part of its licensed legal services providers.
- (2) Option A is for the approved regulator to maintain its own compensation fund (separate from the Guarantee Fund) in relation to its licensed providers.
- (3) If option A is proceeded with, the compensation fund is to be—
  - (a) held by the approved regulator for such purpose as corresponds to the purpose for which the Guarantee Fund is held under section 43(2)(c) of the 1980 Act in relation to licensed providers,
  - (b) administered by it in such way as corresponds to the administration of the Guarantee Fund in accordance with section 43(3) to (7) of, and Part I of Schedule 3 to, the 1980 Act (so far as applicable in relation to licensed providers).
- (4) Option B is for the approved regulator, by not maintaining its own compensation fund as mentioned in option A, to cause the Guarantee Fund to be administered as respects its licensed providers.
- (5) For the purpose of option B, see section 43(2)(c) to (8) of, and Part I of Schedule 3 to, the 1980 Act.
- (6) As soon as it has decided which of options A and B to proceed with, the approved regulator (where not the Law Society) must inform the Law Society of its decision.

#### **25 Compensation rules: general**

- (1) For the purposes of this Part, the compensation rules are rules in pursuance of (as the case may be)—
  - (a) option A in section 24, or
  - (b) option B in that section.
- (2) In pursuance of option A, the rules must—
  - (a) state—
    - (i) the purpose of the approved regulator's compensation fund,
    - (ii) as a minimum, the monetary amount to be contained in that fund,
  - (b) describe the way in which that fund is to be administered by the approved regulator,
  - (c) specify the criteria for qualifying for payment out of that fund,
  - (d) provide for the procedure for—
    - (i) making claims for such payment,
    - (ii) determining such claims,

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- (e) require the making of contributions to that fund by a licensed provider in accordance with the relevant scale of annual contributions fixed by virtue of section 24(3)(b),
  - (f) make provision for the destination (or distribution) of that fund in the event that the approved regulator ceases to operate.
- (3) In pursuance of option B, the rules must require the making of contributions to the Guarantee Fund by a licensed provider in accordance with the relevant scale of annual contributions fixed under paragraph 1(3) of Schedule 3 to the 1980 Act.

## **26 More about compensation arrangements**

- (1) Compensation rules may include such further compensation arrangements as to licensed providers for which provision is (in the approved regulator's opinion) necessary or expedient.
- (2) The Scottish Ministers may by regulations make further provision about compensation arrangements as to licensed providers, including (in particular)—
- (a) for the content of compensation rules,
  - (b) in connection with a compensation fund, for functions of approved regulators and licensed providers.
- (3) In sections 24 and 25 and this section, the references to the Guarantee Fund are to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).

### *Internal governance*

## **27 Internal governance arrangements**

- (1) The internal governance arrangements of an approved regulator must incorporate such provision as is necessary with a view to ensuring that the approved regulator will—
- (a) always exercise its regulatory functions—
    - (i) independently of any other person or interest,
    - (ii) properly in other respects (in particular, with a view to achieving public confidence),
  - (b) continue to allocate sufficient resources (financial and otherwise) to the exercise of its regulatory functions,
  - (c) review regularly how effectively it is exercising its regulatory functions (in particular, by reviewing the effectiveness of its regulatory scheme).
- (2) In relation to an approved regulator which has representative functions, relevant factors in connection with subsection (1)(a) include (in particular) the need for—
- (a) the approved regulator's code of conduct (if any) for its members to be compatible with the regulatory objectives and the professional principles,
  - (b) the approved regulator to—
    - (i) exercise its regulatory functions separately from its other functions (in particular, any representative functions), and
    - (ii) avoid conflicts of interest in relation to its regulatory functions,

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- (c) the approved regulator to secure that a reasonable proportion of the individuals who are responsible for the exercise of its regulatory functions are not qualified legal practitioners.
- (3) The approved regulator's regard to the factor mentioned in subsection (2)(b) is demonstrable by (for example) its securing that within its structure its regulatory functions are clearly demarcated.

## **28 Communicating outside**

- (1) The internal governance arrangements of an approved regulator must not, in relation to the persons who are involved in the exercise of its regulatory functions, prevent the persons from engaging in consultation or other communication with—
  - (a) other approved regulators,
  - (b) the Scottish Ministers,
  - (c) the Scottish Legal Aid Board,
  - (d) the Scottish Legal Complaints Commission, or
  - (e) the OFT, or any other public body which has functions concerning the application of competition law.
- (2) Where an approved regulator has representative functions, its internal governance arrangements must not, in relation to any person who—
  - (a) is involved in the exercise of its regulatory functions, and
  - (b) considers that the independence or effectiveness of the approved regulator's exercise of its regulatory functions is being (or has been) for any reason adversely affected by the furtherance of its representative functions,
 prevent the person from notifying the Scottish Ministers accordingly.
- (3) Subsections (1) and (2) are subject to any overriding prohibition or restriction arising by virtue of any relevant—
  - (a) enactment or rule of law, or
  - (b) rule of professional conduct or ethics.

## **29 More about governance**

- (1) The Scottish Ministers may by regulations make further provision about the internal governance arrangements of approved regulators.
- (2) However, regulations under subsection (1) must relate to the regulatory functions of approved regulators.
- (3) Before making regulations under subsection (1), the Scottish Ministers must—
  - (a) have the Lord President's agreement, and
  - (b) consult any approved regulator that would be affected by the regulations.
- (4) For the purposes of this Part, the internal governance arrangements of an approved regulator are its own organisational and operational arrangements for the carrying out of its activities.

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### *Regulatory functions etc.*

#### **30 Regulatory and representative functions**

- (1) For the purposes of this Part, the regulatory functions of an approved regulator are the approved regulator's functions of regulating its licensed legal services providers including (in particular) its functions—
  - (a) in relation to its regulatory scheme,
  - (b) under section 31.
- (2) For the purposes of this Part, the representative functions of an approved regulator are any functions that the approved regulator has, in that or any other capacity, of representing or promoting the interests of the individual persons (taken collectively or otherwise) who form its membership.
- (3) Nothing in this Part permits the Scottish Ministers to interfere with an approved regulator's representative functions (but this does not prevent the Scottish Ministers from taking such action under this Part as they consider appropriate for the purpose of ensuring that an approved regulator's regulatory functions are not prejudiced by its representative functions).

#### **31 Assessment of licensed providers**

- (1) An approved regulator must assess the performance of each of its licensed providers at least once in every successive period of 3 years from (in each case) the date on which the approved regulator issued the licensed provider with its licence.
- (2) The Scottish Ministers may require an approved regulator to carry out a special assessment of a licensed provider if the Scottish Legal Complaints Commission requests that they do so in a case where the Commission has significant concerns about how a complaint about a licensed provider has been dealt with.
- (3) An assessment under this section must (in particular) concern—
  - (a) the licensed provider's compliance with section 50(1), and
  - (b) such other matters as the approved regulator considers appropriate.
- (4) When conducting the assessment, the approved regulator may—
  - (a) require from the licensed provider the production of any—
    - (i) relevant documents,
    - (ii) other relevant information,
  - (b) interview any person within the licensed provider.
- (5) The approved regulator must—
  - (a) prepare a report on the assessment, and
  - (b) send a copy of the report to the licensed provider (and, if the assessment was required under subsection (2), also send one to the Scottish Ministers and the Commission).
- (6) Before finalising the report, the approved regulator must—
  - (a) send a draft of the report to the licensed provider, and
  - (b) give it a reasonable opportunity to make representations about—
    - (i) the findings of the assessment, and

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(ii) any recommendations contained in the report.

- (7) If the assessment discloses (or appears to disclose) any professional misconduct by a member of a professional association, the approved regulator must notify that association accordingly.
- (8) An approved regulator may delegate any of its functions under this section to any suitable person or body.
- (9) The Scottish Ministers may by regulations make further provision about the assessment of licensed providers.

VALID FROM 02/07/2012

### *Relationship with other bodies*

#### **32 Giving information to SLAB**

- (1) An approved regulator must provide the Scottish Legal Aid Board with such information as the Board may reasonably require for the purpose mentioned in subsection (2).
- (2) The purpose is the Board's exercise of its function under section 1(2A) of the 1986 Act.

#### **33 Reporting to Law Society**

- (1) This section applies in relation to any licensed legal services provider (whose approved regulator is not the Law Society) that is required, by compensation rules made by reference to section 25(3), to make contributions to the Guarantee Fund.
- (2) The approved regulator must report to the Law Society any—
  - (a) breach of the regulatory scheme by the licensed provider that the approved regulator discovers as regards the procedures arising under practice rules made by reference to section 22,
  - (b) suspicion held by the approved regulator that there is engagement in such financial impropriety as may (in the approved regulator's opinion) give rise to the risk of a claim being made on the Guarantee Fund.
- (3) The approved regulator must make available to the Law Society any report prepared by the approved regulator about an inspection carried out by it as regards compliance with—
  - (a) the procedures arising under practice rules made by reference to section 22,
  - (b) any other financial procedure as regards which the approved regulator has functions under this Part.
- (4) The approved regulator must inform the Law Society of any further action that it intends to take (or has taken) in relation to any of the matters mentioned in subsections (2) and (3).
- (5) In this section and section 34, the references to the Guarantee Fund are to it as defined in section 26(3).



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### **34 Steps open to Society**

- (1) Where—
  - (a) section 33 applies, and
  - (b) the Law Society suspects that the approved regulator is failing to enforce under this Part any financial procedure to which that section relates, the Society may refer the circumstances to the Scottish Ministers.
- (2) But the Society may make a referral under subsection (1) only if—
  - (a) it has made representations to the approved regulator in respect of its suspicion, and
  - (b) in light of any response to them (or where none is received timeously), its suspicion is not relieved.
- (3) In a referral under subsection (1), the Society may—
  - (a) request that the Scottish Ministers take such action under this Part as they consider appropriate,
  - (b) seek their consent to the Society's taking of the step mentioned in subsection (5).
- (4) That consent may be—
  - (a) sought only if the Society suspects that the suspected failure may be facilitating to any extent engagement in such financial impropriety as may (in the Society's opinion) give rise to the risk of a claim being made on the Guarantee Fund,
  - (b) given only if the Scottish Ministers are satisfied (on information provided by the Society) that—
    - (i) the Society's suspicions are reasonable, and
    - (ii) it is necessary (by way of investigation) that the step be taken.
- (5) The step is that the Society inspect, at the licensed provider's premises, any document, record or other information (in any form) found there which—
  - (a) relates to—
    - (i) the licensed provider's client account, or
    - (ii) any other financial account held by it, and
  - (b) is relevant in relation to any financial procedure to which section 33 relates.

### **35 Financial inspection by Society**

- (1) If the relevant consent is given under subsection (4)(b) of section 34, the Law Society may take the step mentioned in subsection (5) of that section.
- (2) The licensed provider must co-operate with the Society in connection with the taking of the step.
- (3) But the Society does not have authority to take the step (or enter the premises) unless the Society has—
  - (a) consulted the approved regulator about the taking of it, and
  - (b) given the licensed provider at least 48 hours notice of the taking of it.
- (4) Following the taking of the step, the Society—
  - (a) must report its findings to—

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- (i) the approved regulator, and
  - (ii) the Scottish Ministers,
  - (b) in the report to the Scottish Ministers, may request that they take such action (or further action) under this Part as they consider appropriate.
- (5) In this section, the references to taking the step mentioned in section 34(5) are to its being taken by the Society's representatives as appointed for the purpose of this section.

### *Performance and measures*

VALID FROM 02/07/2012

#### **36 Review of own performance**

- (1) An approved regulator must review annually its performance.
- (2) In particular, a review is to cover the following matters—
  - (a) the approved regulator's compliance with section 77,
  - (b) the exercise of its regulatory functions,
  - (c) the operation of its internal governance arrangements,
  - (d) its compliance with any measures applying to it by virtue of section 38(4) (a) or (b).
- (3) The approved regulator must send a report on the review to the Scottish Ministers.
- (4) The report must contain a copy of the approved regulator's annual accounts (but only so far as they are relevant in connection with its functions under this Part).
- (5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (6) The Scottish Ministers may by regulations make further provision about—
  - (a) the review of approved regulators' performance,
  - (b) reports on reviews of their performance.

VALID FROM 02/07/2012

#### **37 Monitoring by Ministers**

- (1) The Scottish Ministers may monitor the performance of approved regulators in such manner as they consider appropriate.
- (2) Monitoring the performance of an approved regulator includes (in particular) doing so by reference to—
  - (a) its compliance with section 77,
  - (b) the exercise of its regulatory functions,
  - (c) the operation of its internal governance arrangements,
  - (d) its compliance with any measures applying to it by virtue of section 38(4) (a) or (b).

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- (3) An approved regulator must—
- (a) provide such information about its performance in relation to its regulatory scheme as the Scottish Ministers may reasonably request,
  - (b) do so within 21 days beginning with the date of the request (or such longer period as the Scottish Ministers may allow).

### **38 Measures open to Ministers**

- (1) The Scottish Ministers may, in relation to an approved regulator, take one or more of the measures mentioned in subsection (4) if they consider that to be appropriate in the circumstances of the case.
- (2) When considering the appropriateness of taking any of those measures, or a combination of them, the Scottish Ministers must (except in the case of a measure mentioned in paragraph (f) of that subsection) have particular regard to the effect that it may have on the approved regulator's observance of the regulatory objectives.
- (3) Schedules 1 to 6 (to which subsection (1) is subject) respectively make provision concerning the measures mentioned in subsection (4).
- (4) The measures are—
- (a) setting performance targets,
  - (b) directing that action be taken,
  - (c) publishing a statement of censure,
  - (d) imposing a financial penalty,
  - (e) amending an authorisation given under section 10,
  - (f) rescinding an authorisation given under that section.
- (5) The rescission of an authorisation by virtue of subsection (4)(f) has the effect of terminating the associated approval (of the approved regulator) given under section 7, except where it is stated under paragraph 5(3)(b) of schedule 6 that the approval is preserved.
- (6) The Lord President's agreement is required for the taking of any of the measures mentioned in subsection (4) except paragraph (d).
- (7) The Scottish Ministers may by regulations—
- (a) specify other measures that may be taken by them,
  - (b) make further provision about the measures that they may take (including for the procedures to be followed),
- in relation to approved regulators.
- (8) Before making regulations under subsection (7), the Scottish Ministers must—
- (a) have the Lord President's agreement, and
  - (b) consult every approved regulator.

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### *Ceasing to regulate*

VALID FROM 02/07/2012

#### **39 Surrender of authorisation**

- (1) An approved regulator may, with the prior agreement of the Scottish Ministers, surrender the authorisation given to it under section 10.
- (2) Schedule 7 (to which subsection (1) is subject) makes provision concerning the surrender of such an authorisation.
- (3) 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 such an authorisation.
- (4) The surrender of an authorisation by virtue of subsection (1) has the effect of terminating the associated approval (of the approved regulator) given under section 7.

VALID FROM 02/07/2012

#### **40 Cessation directions**

- (1) This section applies where—
  - (a) an approved regulator amends its regulatory scheme so as to exclude the regulation of particular categories of licensed providers or legal services, or
  - (b) the authorisation of an approved regulator is to be (or has been)—
    - (i) amended by virtue of section 38(4)(e) so as to exclude the regulation of certain categories of licensed providers or legal services,
    - (ii) rescinded by virtue of section 38(4)(f), or
    - (iii) surrendered by virtue of section 39(1).
- (2) The Scottish Ministers may direct the approved regulator to take specified action (or refrain from doing something) if they consider that to be necessary or expedient for the continued effective regulation of a licensed provider.
- (3) The approved regulator must (so far as practicable) comply with a direction given to it under subsection (2).
- (4) For the purposes of this section, a reference to an approved regulator includes (as the context requires) a former approved regulator.

VALID FROM 02/07/2012

#### **41 Transfer arrangements**

- (1) This section applies where—

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- (a) an approved regulator has amended its regulatory scheme so as to exclude the regulation of particular categories of licensed provider or legal services,
  - (b) the authorisation of an approved regulator is to be (or has been)—
    - (i) amended by virtue of section 38(4)(e) so as to exclude the regulation of particular categories of licensed provider or legal services,
    - (ii) rescinded by virtue of section 38(4)(f), or
    - (iii) surrendered by virtue of section 39(1), or
  - (c) the approved regulator is otherwise unable to continue to regulate some or all of its licensed providers.
- (2) The approved regulator must (as soon as reasonably practicable)—
- (a) notify each of its licensed providers of the relevant situation within subsection (1),
  - (b) do so by reference to any effective date.
- (3) A notification under subsection (2) must inform each licensed provider as to whether it requires, in consequence of the relevant situation, to transfer to the regulation of a different approved regulator (a “new regulator”) from the one which issued its current licence (the “current regulator”).
- (4) Each licensed provider that is so required to transfer to a new regulator must—
- (a) within 28 days beginning with the date of the notification, or failing which as soon as practicable, take all reasonable steps so as to transfer to the regulation of a new regulator, and
  - (b) where it does so transfer, take (as soon as practicable) such steps as are necessary to ensure that it complies with the new regulator's regulatory scheme before the end of the changeover period.
- (5) For the purpose of subsection (4)(b), the changeover period is the period of 6 months beginning with the date on which the new regulator takes over the regulation of the licensed provider.
- (6) On the coming into effect of a licence issued to the licensed provider by a new regulator, the licence issued to it by the current regulator ceases to have effect.

## 42 Extra arrangements

- (1) The Scottish Ministers may by regulations make provision in connection with section 41 as to the arrangements for the transfer of licensed providers to the regulation of a different approved regulator (a “new regulator”).
- (2) Regulations under subsection (1) may (in particular)—
- (a) provide for a licensed provider which has not transferred to the regulation of a new regulator to be regulated by such new regulator as may be appointed by the Scottish Ministers with the new regulator's consent,
  - (b) provide for the Scottish Ministers to recover on behalf of the new regulator, or a licensed provider, any fee (or a part of it) paid by the licensed provider to the former approved regulator in connection with the licensed provider's current licence.

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### *Change of regulator*

#### **43 Change of approved regulator**

- (1) A licensed legal services provider may transfer voluntarily to the regulation of a different approved regulator (a “new regulator”) from the one which issued its current licence (the “current regulator”).
- (2) But the transfer requires the new regulator's written consent (and its agreement to issue the licensed provider with a licence having effect from the date on which the transfer is to occur).
- (3) Where a licensed provider wishes to do so, it must—
  - (a) give a notice which complies with subsection (4) to—
    - (i) the current regulator, and
    - (ii) the Scottish Ministers, and
  - (b) provide such further information as may reasonably be required by either of them.
- (4) A notice complies with this subsection if it—
  - (a) explains why the licensed provider wishes to transfer to the regulation of a new regulator,
  - (b) specifies—
    - (i) the new regulator,
    - (ii) the date on which the transfer is to occur (which must be within 28 days of the date of the notice), and
  - (c) is accompanied by a copy of the new regulator's written consent to the transfer.
- (5) On the coming into effect of a licence issued to the licensed provider by a new regulator, the licence issued to it by the current regulator ceases to have effect.
- (6) The Scottish Ministers may by regulations make further provision about the transfer by a licensed provider to the regulation of a new regulator.

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

- (1) The Scottish Ministers may by regulations make provision which establishes a body with a view to its becoming an approved regulator.
- (2) The Scottish Ministers may by regulations make provision which allows them to act as an approved regulator in such circumstances as the regulations may prescribe.
- (3) Regulations under subsection (2) may provide for this Part to apply with or subject to such modifications as the regulations may specify.
- (4) No regulations are to be made under subsection (1) or (2)—
  - (a) without the Lord President's agreement, and
  - (b) unless the Scottish Ministers believe that their intervention under this section is necessary, as a last resort, in order to ensure that the provision of legal services by licensed providers is regulated effectively.

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*Additional functions etc.*

**45 Additional powers and duties**

- (1) The Scottish Ministers may by regulations make provision conferring on approved regulators such additional functions as they consider appropriate for the purposes of this Part.
- (2) Before making regulations under subsection (1), the Scottish Ministers must—
  - (a) have the Lord President's agreement, and
  - (b) consult—
    - (i) every approved regulator,
    - (ii) such other person or body as they consider appropriate.

VALID FROM 02/07/2012

**46 Guidance on functions**

- (1) In exercising its functions under this Part, an approved regulator must have regard to any guidance issued (to approved regulators generally) by the Scottish Ministers for the purposes of or in connection with this Part.
- (2) Before issuing such guidance, the Scottish Ministers must consult—
  - (a) every approved regulator,
  - (b) such other person or body as they consider appropriate.
- (3) The Scottish Ministers must publish any such guidance as issued (or re-issued).

**CHAPTER 2**

LICENSED LEGAL SERVICES PROVIDERS

*Licensed providers*

**47 Licensed providers**

- (1) For the purposes of this Part, a licensed legal services provider is a business entity which, through the designated and other persons within it—
  - (a) provides (or offers to provide) legal services—
    - (i) to the general public or otherwise, and
    - (ii) for a fee, gain or reward, and
  - (b) does so under a licence issued by an approved regulator in accordance with the approved regulator's licensing rules.
- (2) An entity is eligible to be a licensed provider only if it has within it, for the provision of legal services, at least one solicitor who holds a valid practising certificate that is free of conditions (such as may be imposed under section 15(1)(b) or 53(5) of the 1980 Act).

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(3) A licensed provider may not be regulated by more than one approved regulator at the same time.

(4) In this Part, a reference to a licensed provider is to a licensed legal services provider.

#### **48 Eligibility criteria**

(1) This section—

- (a) applies for the purposes of licensing an entity as a licensed legal services provider under this Part,
- (b) does so in conjunction with section 49.

(2) The following are examples of arrangements which would make an entity eligible to be a licensed provider—

- (a) the entity has within it—
  - (i) at least one solicitor as mentioned in section 47(2), and
  - (ii) at least one individual practitioner of another type,
 for the carrying out of the sort of legal work for which each is qualified,
- (b) the entity has within it at least one solicitor as mentioned in section 47(2) but, through also having within it at least one person who is not a solicitor or other type of individual practitioner, additionally provides (or offers to provide)—
  - (i) other professional services, or
  - (ii) services of another kind,
- (c) the entity has within it at least one solicitor as mentioned in section 47(2) but not every person who has ownership or control of the entity, or another material interest in it, is a solicitor (or a firm of solicitors) or an incorporated practice.

(3) But an entity, to be eligible to be a licensed provider—

- (a) need not be a body corporate or a partnership,
- (b) requires, if it falls—
  - (i) under the ownership or control of another entity, or
  - (ii) within the structure of another entity,
 to be a separate part of the other entity or otherwise distinct from it.

(4) For the avoidance of doubt, an entity is not eligible to be a licensed provider if it—

- (a) consists of—
  - (i) a single solicitor practising under the solicitor's own name, or
  - (ii) a solicitor otherwise practising as a sole practitioner,
- (b) is a firm of solicitors or an incorporated practice, or
- (c) is a law centre as defined in section 65(1) of the 1980 Act.

(5) In subsection (2)(a)(ii) and (b), a type of “individual practitioner” (apart from a solicitor) is—

- (a) an advocate,
- (b) a conveyancing or executry practitioner,
- (c) a litigation practitioner, or
- (d) a confirmation agent or will writer within the meaning of Part 3.



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- (6) The Scottish Ministers may by regulations—
- (a) make—
    - (i) provision specifying other categories of entity that are, or are not, eligible to be a licensed provider,
    - (ii) further provision about criteria for eligibility to be a licensed provider,
  - (b) modify—
    - (i) section 47(2) so as to specify an additional type of legally qualified person (as an alternative to a solicitor as mentioned there),
    - (ii) subsection (5) so as to add a type of legal practitioner to the list there.
- (7) Before making regulations under subsection (6)(b), the Scottish Ministers must consult every approved regulator.

#### **49 Majority ownership**

- (1) An entity is eligible to be a licensed provider only if the qualifying investors in it (taken together) have at least a 51% stake in the total ownership or control of the entity.
- (2) For the purpose of subsection (1), a “qualifying investor” is—
- (a) a solicitor investor, or
  - (b) an investor who is a member of another regulated profession.
- (3) In subsection (2)(b), a “regulated profession” is a profession the professional activities of whose members (and qualifications for membership of which) are, under statutory or administrative arrangements, regulated by a professional association.
- (4) Despite the generality of subsections (2)(b) and (3), the Scottish Ministers—
- (a) are by regulations to specify in connection with those subsections what is, or is not, to be regarded as a regulated profession,
  - (b) may by regulations specify in connection with those subsections what is, or is not, to be regarded as a professional association, professional activities (or qualifications) or membership of a profession.
- (5) Before making regulations under subsection (4), the Scottish Ministers must—
- (a) have the Lord President's agreement, and
  - (b) consult—
    - (i) the Law Society,
    - (ii) every approved regulator,
    - (iii) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
    - (iv) such other person or body as they consider appropriate.

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### *Key duties and positions*

VALID FROM 02/07/2012

#### **50 Key duties**

- (1) A licensed legal services provider must—
  - (a) have regard to the regulatory objectives,
  - (b) adhere to the professional principles,
  - (c) comply with—
    - (i) its approved regulator's regulatory scheme,
    - (ii) the terms and conditions of its licence.
- (2) A licensed provider must seek to ensure that every designated or other person who is—
  - (a) within the licensed provider, and
  - (b) subject to a professional code of conduct,
 complies with the code of conduct.
- (3) A licensed provider must have within it—
  - (a) a Head of Legal Services (see section 51), and
  - (b) either—
    - (i) a Head of Practice (see section 52), or
    - (ii) a Practice Committee (see section 53).
- (4) A licensed provider must ensure that the following positions are not left unoccupied—
  - (a) that of its Head of Legal Services, and
  - (b) that (as the case may be)—
    - (i) of its Head of Practice, or
    - (ii) within its Practice Committee by virtue of section 53(3).
- (5) However, the same person may (at the same time) be a licensed provider's Head of Legal Services and also its Head of Practice.

#### **51 Head of Legal Services**

- (1) It is for a licensed provider to make such administrative arrangements as it considers appropriate in respect of its Head of Legal Services.
- (2) A person is eligible for appointment (and to act) as its Head of Legal Services only if the person is a solicitor who holds a valid practising certificate that is free of conditions (such as may be imposed under section 15(1)(b) or 53(5) of the 1980 Act).
- (3) But a person becomes disqualified from that position if the person is disqualified from practice as a solicitor by reason of having been—
  - (a) struck off (or removed from) the roll of solicitors, or
  - (b) suspended from practice.
- (4) A Head of Legal Services has the function of securing the licensed provider's—

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- (a) compliance with section 50(1)(a) and (b),
  - (b) fulfilment of its other duties under this Part so far as relevant in connection with its provision of legal services.
- (5) A Head of Legal Services is to manage the designated persons within the licensed provider with a view to ensuring that they—
- (a) have regard to the Head's function under subsection (4),
  - (b) adhere to the professional principles,
  - (c) meet their professional obligations.
- (6) A Head of Legal Services is to take such reasonable steps as may be required for the purposes of subsection (4).
- (7) If it appears to a Head of Legal Services that the licensed provider is failing (or has failed) to fulfil any of its duties under this Part or another enactment, the Head is to report that fact to the Head of Practice.
- (8) Where (and to the extent that) under this section and section 52 a function falls to both—
- (a) a Head of Legal Services, and
  - (b) a Head of Practice,
- they are jointly and severally responsible for exercising the function.
- (9) The Scottish Ministers may by regulations—
- (a) make further provision about—
    - (i) Heads of Legal Services,
    - (ii) the functions of such Heads (in their capacity as such),
  - (b) modify subsection (2) so as to specify an additional type of legally qualified person (as an alternative to a solicitor as mentioned there).
- (10) Before making regulations under subsection (9), the Scottish Ministers must consult the Lord President.

## **52 Head of Practice**

- (1) It is for a licensed provider to make such administrative arrangements as it considers appropriate in respect of its Head of Practice.
- (2) A person is eligible for appointment (and to act) as its Head of Practice only if the person—
- (a) has such qualifications, expertise and experience as are reasonably required, and
  - (b) in other respects, is fit and proper for the position.
- (3) A Head of Practice has the function of securing the licensed provider's—
- (a) compliance with section 50(1)(c),
  - (b) fulfilment of its other duties under this Part.
- (4) A Head of Practice is to manage the designated and other persons within the licensed provider with a view to ensuring that they—
- (a) have regard to the Head's functions under this Part,
  - (b) meet any professional obligations to which they are subject.

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- (5) A Head of Practice is to take such reasonable steps as may be required for the purposes of subsection (3).
- (6) If it appears to a Head of Practice that—
  - (a) the licensed provider is failing (or has failed) to fulfil any of its duties under this Part or another enactment,
  - (b) an investor in the licensed provider is—
    - (i) failing (or has failed) to fulfil any of the investor's duties under this Part or another enactment, or
    - (ii) contravening (or has contravened) section 66(1) or (2),the Head is to report that fact to the licensed provider's approved regulator.
- (7) The Scottish Ministers may by regulations make further provision about—
  - (a) Heads of Practice,
  - (b) the functions of such Heads (in their capacity as such).
- (8) Before making regulations under subsection (7), the Scottish Ministers must consult the Lord President.

### **53 Practice Committee**

- (1) It is for a licensed provider—
  - (a) to decide whether to have a Practice Committee (instead of having a Head of Practice),
  - (b) if it has one, to make such administrative arrangements as it considers appropriate in respect of it.
- (2) A Practice Committee has the functions under this Part that would otherwise be exercisable by a Head of Practice (and the specification of any of those functions is to be read accordingly).
- (3) A Practice Committee is to have among its members a person who would be eligible for appointment as its Head of Practice (if there were one).
- (4) The members of a Practice Committee are jointly and severally responsible as regards the Committee's functions.
- (5) The Scottish Ministers may by regulations make further provision about—
  - (a) Practice Committees,
  - (b) the functions of such Committees.
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.

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*Appointment to position etc.*

VALID FROM 02/07/2012

**54 Notice of appointment**

- (1) Subsection (2) applies whenever a licensed legal services provider appoints a person as its—
  - (a) Head of Legal Services, or
  - (b) Head of Practice.
- (2) The licensed provider must—
  - (a) within 14 days from the date of the appointment—
    - (i) notify its approved regulator of that fact,
    - (ii) give the approved regulator the name and other details of the person appointed,
  - (b) from that date give the approved regulator such further relevant information, and by such time, as it may reasonably require.
- (3) Subsections (4) and (5) apply where a licensed provider sets up a Practice Committee.
- (4) The licensed provider must—
  - (a) within 14 days from the date on which the Committee is set up—
    - (i) notify its approved regulator of that fact,
    - (ii) give the approved regulator the names and other relevant details of the Committee's members (including with specific reference to section 53(3)),
  - (b) from that date give the approved regulator such other relevant information, and by such time, as it may reasonably require.
- (5) The licensed provider must also—
  - (a) whenever there is a change in the membership of the Committee, give the approved regulator—
    - (i) notice of the change,
    - (ii) the name and other relevant details of any new Committee member,within 14 days from the date on which the change occurs,
  - (b) if it ever dissolves the Committee (in favour of having a Head of Practice), notify its approved regulator of that fact within 14 days from the date on which the dissolution occurs,
  - (c) from the date mentioned in paragraph (a) or (b) (as the case may be) give the approved regulator such further relevant information, and by such time, as it may reasonably require.

**55 Challenge to appointment**

- (1) An approved regulator may by written notice challenge the appointment by any of its licensed providers of a person (“P”)—

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- (a) as its—
    - (i) Head of Legal Services, or
    - (ii) Head of Practice, or
  - (b) as a member of its Practice Committee.
- (2) A notice of a challenge under subsection (1)—
- (a) requires to be given by the approved regulator within 14 days of the relevant notification to it under section 54(2), (4) or (5)(a),
  - (b) is to specify the grounds for the challenge.
- (3) A challenge under subsection (1) may be made only if the approved regulator—
- (a) believes that P is (or may be)—
    - (i) ineligible, or
    - (ii) unsuitable,
 for the appointment, or
  - (b) has other reasonable grounds for the challenge.
- (4) If the approved regulator determines (after making a challenge under subsection (1)) that the grounds for the challenge are made out, it may direct the licensed provider to rescind P's appointment.
- (5) Before giving a direction under subsection (4), the approved regulator must give the licensed provider and P 28 days (or such longer period as it may allow) to—
- (a) make representations to it,
  - (b) take such steps as the licensed provider or P may consider expedient.
- (6) Practice and licensing rules respectively must—
- (a) explain the basis on which P's suitability for the appointment is determinable,
  - (b) provide that the licensed provider's licence is to be revoked or suspended if the licensed provider does not comply with a direction under subsection (4).
- (7) A licensed provider which or another person who is aggrieved by a direction under subsection (4) (or both jointly) may appeal against the direction—
- (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the direction is given.
- (8) For the purpose of subsections (1) to (6), an example of things relevant as respects P's suitability for the appointment is whether P has a record of misconduct in any professional context.

## **56 Disqualification from position**

- (1) An approved regulator has the functions exercisable—
- (a) under this section and section 57, and
  - (b) by reference to one or more of the conditions specified in section 58,
- in relation to a person (“P”) who holds within any of its licensed providers any of the posts to which those sections relate.
- (2) If the first condition is met in relation to P, the approved regulator must disqualify P from—
- (a) appointment (or acting) as the Head of Practice,

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- (b) membership of a Practice Committee.
- (3) If the second condition is met in relation to P, the approved regulator—
  - (a) must disqualify P from—
    - (i) appointment (or acting) as the Head of Legal Services or Head of Practice,
    - (ii) membership of a Practice Committee,
  - (b) may disqualify P from being a designated person.
- (4) If the third condition is met in relation to P, the approved regulator must disqualify P from—
  - (a) appointment (or acting) as the Head of Legal Services or Head of Practice,
  - (b) membership of a Practice Committee.
- (5) If the fourth condition is met in relation to P, the approved regulator—
  - (a) must disqualify P from—
    - (i) appointment (or acting) as the Head of Legal Services or Head of Practice,
    - (ii) membership of a Practice Committee,
  - (b) may disqualify P from being a designated person.
- (6) If the fifth condition is met in relation to P, the approved regulator may disqualify P from—
  - (a) appointment (or acting) as the Head of Legal Services or Head of Practice,
  - (b) membership of a Practice Committee,
  - (c) being a designated person.

## **57 Effect of disqualification**

- (1) A disqualification under section 56—
  - (a) may be—
    - (i) without limit of time, or
    - (ii) for a fixed period,
  - (b) extends so as to apply in relation to every licensed provider (including a licensed provider that is subject to the regulation of a different approved regulator).
- (2) Where a disqualification under section 56 is from being a designated person, the disqualification may be framed so as to be limited by reference to—
  - (a) particular activities, or
  - (b) activities carried out without appropriate supervision (for example, that of a senior solicitor).
- (3) Before disqualifying P under section 56, the approved regulator must give the licensed provider and P 28 days (or such longer period as it may allow) to—
  - (a) make representations to it,
  - (b) take such steps as the licensed provider or P may consider expedient.
- (4) Licensing rules must provide that the licensed provider's licence may be revoked or suspended if the licensed provider wilfully disregards a disqualification imposed under section 56.

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(5) Practice rules must—

- (a) set procedure (which the approved regulator is to follow) for imposing a disqualification under section 56,
- (b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that section.

(6) A person who is disqualified under section 56 may appeal against the disqualification—

- (a) to the sheriff,
- (b) within the period of 3 months beginning with the date on which the disqualification is imposed.

VALID FROM 02/07/2012

## 58 Conditions for disqualification

(1) This section applies for the purposes of section 56.

(2) The first condition is that—

- (a) P—
  - (i) is subject to a trust deed granted by P for the benefit of P's creditors,
  - (ii) is subject to an individual voluntary arrangement under the Insolvency Act 1986, to repay P's creditors,
  - (iii) has been adjudged bankrupt and has not been discharged from bankruptcy, or
  - (iv) has been sequestrated (that is, sequestration of P's estate has been awarded) and the sequestration has not been discharged, and
- (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.

(3) The second condition is that—

- (a) P is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 or corresponding Northern Ireland legislation, and
- (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.

(4) The third condition is that—

- (a) P—
  - (i) is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 or corresponding Northern Ireland legislation,
  - (ii) is disqualified by a court from holding, or otherwise has been removed by a court from, a position of business responsibility (for example, from being a director of a charity), and
- (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.

(5) The fourth condition is that—

- (a) P—



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- (i) has been convicted of an offence involving dishonesty, or
  - (ii) in respect of an offence, has been fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more, and
  - (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.
- (6) The fifth condition is that—
- (a) P (acting in the relevant capacity) has—
    - (i) failed in a material regard to fulfil any of P's duties under (or arising by virtue of) this Part, or
    - (ii) caused, or substantially contributed to, a material breach of the terms or conditions of the licensed provider's licence, and
  - (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.
- (7) In subsections (3)(a) and (4)(a)(i), “Northern Ireland legislation” has the meaning given in section 24(5) of the Interpretation Act 1978.

### *Designated persons*

#### **59 Designated persons**

- (1) In this Part, a “designated person” within a licensed legal services provider is a person who is designated as such under subsection (2).
- (2) Designation under this subsection is written designation by the licensed provider to carry out legal work in connection with the licensed provider's provision of legal services.
- (3) For the purposes of subsection (2)—
  - (a) designation by the licensed provider means designation on its behalf by its Head of Legal Services or Head of Practice (who has the function accordingly),
  - (b) a person is eligible for designation only if the person is an employee of the licensed provider (or otherwise works within it under any arrangement),
  - (c) it is immaterial whether the person is—
    - (i) a member of a professional association, or
    - (ii) paid for the work.

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#### **60 Working context**

- (1) A Head of Legal Services is, in furtherance of section 51(5)(b) and (c), responsible for ensuring that there is (by or under the direction of the Head) adequate supervision of the legal work carried out by the designated persons within the licensed provider.

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- (2) Only a designated person within a licensed provider may carry out legal work in connection with its provision of legal services.
- (3) Nothing in this Part affects the operation of—
  - (a) section 32 of the 1980 Act or any other enactment which requires that a particular sort of legal work be carried out by an individual of a particular description (or in a particular way), or
  - (b) any rule of professional practice, conduct or discipline (whether for solicitors or otherwise) which properly so requires.

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## **61 Listing and information**

- (1) The Head of Practice of a licensed provider must—
  - (a) keep a list of the designated persons within the licensed provider, and
  - (b) give its approved regulator a copy of the list whenever the approved regulator requests it.
- (2) The Head of Practice must give its approved regulator such information about the designated persons within the licensed provider as the approved regulator may reasonably request.

### *Non-solicitor investors*

## **62 Fitness for involvement**

- (1) An approved regulator must—
  - (a) before issuing a licence to a licensed legal services provider, or renewing it, satisfy itself as to the fitness of every non-solicitor investor in the licensed provider for having an interest in the licensed provider,
  - (b) thereafter, monitor as it considers appropriate the investor's fitness in that regard.
- (2) Licensing rules must—
  - (a) explain the basis on which a non-solicitor investor's fitness for having an interest in a licensed provider is determinable,
  - (b) provide that, where the approved regulator determines that the investor is unfit in that regard—
    - (i) a licence is not to be issued to the licensed provider (or renewed),
    - (ii) if issued, the licence is to be revoked or suspended.
- (3) But the approved regulator need not act as required by licensing rules made under subsection (2)(b) if, by such time as it may reasonably appoint, the licensed provider demonstrates to it that (following disqualification as required by section 65(1) or otherwise) the investor no longer has the relevant interest.
- (4) The approved regulator must, before making its final determination as to fitness, give the non-solicitor investor 28 days (or such longer period as it may allow) to—

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- (a) make representations to it,
  - (b) take such steps as the investor may consider expedient.
- (5) A person who is determined as unfit under this section may appeal against the determination—
- (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the determination is made.

### **63 Exemption from fitness test**

- (1) Section 62(1) is subject to this section.
- (2) The approved regulator need not act as required by that section in relation to any exemptible investor in the licensed provider.
- (3) Licensing rules must explain—
  - (a) any circumstances in which the approved regulator proposes to rely on subsection (2),
  - (b) any threshold below the percentage specified in subsection (4) by reference to which it proposes to rely on subsection (2),
  - (c) where it proposes to rely on subsection (2), its reasons.
- (4) In subsection (2), an “exemptible investor” is an investor who has less than a 10% stake in the total ownership or control of the licensed provider.

VALID FROM 02/07/2012

### **64 Factors as to fitness**

- (1) This section applies for the purposes of section 62.
- (2) The following are examples of things relevant as respects a non-solicitor investor's fitness for having an interest in a licensed provider—
  - (a) the investor's—
    - (i) financial position and business record,
    - (ii) probity and character,
    - (iii) family, business or other associations (so far as bearing on character),
  - (b) whether—
    - (i) the investor has ever caused, or substantially contributed to, a material breach of the terms or conditions of any licensed provider's licence,
    - (ii) the investor's involvement in the licensed provider may (in the approved regulator's opinion) be detrimental to the observance of the regulatory objectives or adherence to the professional principles, or to the compliance with this Part or any other enactment, by any person or body,
    - (iii) the investor has ever contravened section 66(1) or (2) or there is (in the approved regulator's opinion) a significant risk that the investor will ever contravene that section.

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- (3) A non-solicitor investor is to be presumed to be unfit for having an interest in a licensed provider if one or more of the following conditions is met—
- (a) the first condition is that the investor—
    - (i) is subject to a trust deed granted by the investor for the benefit of the investor's creditors,
    - (ii) is subject to an individual voluntary arrangement under the Insolvency Act 1986, to repay the investor's creditors,
    - (iii) has been adjudged bankrupt and has not been discharged from bankruptcy, or
    - (iv) has been sequestrated (that is, sequestration of the investor's estate has been awarded) and the sequestration has not been discharged,
  - (b) the second condition is that the investor is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 or corresponding Northern Ireland legislation,
  - (c) the third condition is that the investor—
    - (i) is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 or corresponding Northern Ireland legislation,
    - (ii) is disqualified by a court from holding, or otherwise has been removed by a court from, a position of business responsibility (for example, from being a director of a charity),
  - (d) the fourth condition is that the investor—
    - (i) has been convicted of an offence involving dishonesty, or
    - (ii) in respect of an offence, has been fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more.
- (4) Where a non-solicitor investor is a body, it is relevant as respects the investor's fitness for having an interest in a licensed provider whether or not the persons having (to any extent)—
- (a) ownership or control of the body, or
  - (b) any other material interest in it,
- would (if they were investors in the licensed provider in their own right) be held to be fit in that regard.
- (5) In subsection (3)(b) and (c)(i), “Northern Ireland legislation” has the meaning given in section 24(5) of the Interpretation Act 1978.

## 65 Ban for improper behaviour

- (1) Where an approved regulator determines that a non-solicitor investor in a licensed provider has contravened section 66(1) or (2), the approved regulator must disqualify the investor from having an interest in the licensed provider.
- (2) A disqualification under subsection (1)—
  - (a) may be—
    - (i) without limit of time, or

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- (ii) for a fixed period,
  - (b) extends so as to apply in relation to every licensed provider (including a licensed provider that is subject to the regulation of a different approved regulator).
- (3) Before disqualifying an investor under subsection (1), the approved regulator must give the investor 28 days (or such longer period as it may allow) to—
- (a) make representations to it,
  - (b) take such steps as the investor may consider expedient.
- (4) Practice rules must—
- (a) set procedure (which the approved regulator is to follow) for imposing a disqualification under subsection (1),
  - (b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that subsection.
- (5) A person who is disqualified under subsection (1) may appeal against the disqualification—
- (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the disqualification is imposed.

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## **66 Behaving properly**

- (1) A non-solicitor investor in a licensed provider must not (in that capacity) act in a way that is incompatible with—
- (a) the regulatory objectives or the professional principles,
  - (b) the licensed provider's duties under section 50(1), or
  - (c) its—
    - (i) other duties under this Part,
    - (ii) duties under any other enactment.
- (2) A non-solicitor investor in a licensed provider must not (in that capacity)—
- (a) interfere improperly in the provision of legal or other professional services by the licensed provider,
  - (b) in relation to any designated or other person within the licensed provider—
    - (i) exert undue influence,
    - (ii) solicit unlawful or unethical conduct, or
    - (iii) otherwise behave improperly.

## **67 More about investors**

- (1) Schedule 8 provides for other—
- (a) requirements to which licensed legal services providers are subject,
  - (b) functions of approved regulators,
- in relation to interests in licensed providers.

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- (2) The Scottish Ministers may by regulations make further provision—
  - (a) relating to interests in licensed providers,
  - (b) for licensing rules in connection with persons who have an interest in a licensed provider.
- (3) The Scottish Ministers may by regulations—
  - (a) amend the percentage specified in section 63(4) and paragraph 4(3) of schedule 8,
  - (b) amend (by addition, elaboration or exception) a definition in subsection (6).
- (4) Regulations under subsection (2)(a) may (in particular)—
  - (a) impose requirements to which a licensed provider, or an investor in a licensed provider, is subject,
  - (b) specify criteria or circumstances by reference to which a non-solicitor investor is to be presumed, or held, to be fit (or unfit),
  - (c) set out—
    - (i) what amounts (to any extent) to ownership, control or another material interest,
    - (ii) what interest (or type) is relevant as regards a particular percentage stake in ownership or control,
    - (iii) by reference to a family, business or other association, what other interest (or type) also counts towards such a stake,
  - (d) for circumstances where an interest is held by a body, set out—
    - (i) what interest (or type) in the body counts towards the interest held by it,
    - (ii) the extent to which the interest in it so counts.
- (5) Before making regulations under subsection (3), the Scottish Ministers must have the Lord President's agreement.
- (6) In this Part—
  - (a) an “investor” in a licensed provider is any person who has (to any extent)—
    - (i) ownership or control of the licensed provider, or
    - (ii) any other material interest in it,
  - (b) a “non-solicitor investor” in a licensed provider is an investor who is not entitled to practise—
    - (i) as a solicitor, a firm of solicitors or an incorporated practice,
    - (ii) in England and Wales or Northern Ireland, as a solicitor (outwith the meaning for this Act), or
    - (iii) as a registered European or foreign lawyer,
  - (c) the reference to a “solicitor investor” in a licensed provider is to be construed accordingly.
- (7) In sections 62 to 66, this section and schedule 8, a reference to a licensed provider includes an applicant to become one.

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### Discontinuance of services

VALID FROM 02/07/2012

#### 68 Duty to warn

- (1) Subsection (2) applies where a licensed legal services provider—
- (a) is in serious financial difficulty, or
  - (b) for any reason (except revocation or suspension of its licence under this Part)—
    - (i) intends to stop providing legal services, or
    - (ii) is likely to become unable to continue providing legal services.
- (2) The licensed provider must—
- (a) notify (without delay) its approved regulator accordingly,
  - (b) provide the approved regulator with such relevant information as the approved regulator may require,
  - (c) take all reasonable steps to mitigate such disruption to its clients as is likely to result from the difficulty or (as the case may be) its ceasing to provide legal services.

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#### 69 Inability to operate

- (1) Subsections (2) to (7) apply where—
- (a) through the application of section 48 or 49 or otherwise, a licensed provider is no longer eligible to remain as such,
  - (b) because of a vacancy within a licensed provider, the licensed provider has within it no person who is eligible to be (or act as) its—
    - (i) Head of Legal Services, or
    - (ii) Head of Practice,
  - (c) in respect of a licensed provider—
    - (i) a provisional liquidator, liquidator, receiver or judicial factor is appointed,
    - (ii) an administration or winding up order is made,
    - (iii) a resolution is passed by it for its voluntary winding up (except where that resolution is solely to facilitate reconstruction or amalgamation with another licensed provider), or
  - (d) for some other reason (except revocation or suspension of its licence under this Part), a licensed provider stops providing legal services.
- (2) The licensed provider must—
- (a) notify (without delay and no later than 7 days after the event referred to in subsection (1)) its approved regulator accordingly,
  - (b) provide the approved regulator with such information about the situation as the approved regulator may require.

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- (3) The approved regulator must revoke the licensed provider's licence except where the approved regulator is satisfied that—
  - (a) the situation is temporary, and
  - (b) there are sufficient arrangements in place to safeguard the interests of the licensed provider's clients until such time as the situation is rectified.
- (4) Even if the exception mentioned in subsection (3) is made out, the approved regulator may suspend the licence pending rectification of the situation.
- (5) For the purpose of subsections (3) and (4), the approved regulator must review the situation every 14 days (or, if it so chooses, more frequently).
- (6) For so long as the licensed provider's licence is not revoked or suspended under subsection (3) or (4) in connection with the situation, the situation alone does not prevent the licensed provider from continuing (or recommencing) to provide legal services.
- (7) Where a licensed provider has ceased to exist—
  - (a) its functions under subsection (2)(a) and (b) fall to its former Head of Practice or (if unavailable) its former Head of Legal Services,
  - (b) if neither Head is available, its function under subsection (2)(b) falls to a person nominated by its approved regulator.
- (8) In this section, a reference to a licensed provider includes (as the context requires) a former licensed provider.

## **70 Safeguarding clients**

- (1) Subsections (2) and (3) apply where—
  - (a) a licensed provider—
    - (i) has given (or is required to give) notice to its approved regulator under section 68(2)(a) or 69(2)(a), or
    - (ii) has had (or is to have) its licence revoked or suspended under this Part, and
  - (b) the approved regulator has not informed it (or has not had an opportunity to do so) that the approved regulator is satisfied that it has made sufficient arrangements for the safeguarding of its clients' interests.
- (2) The licensed provider must—
  - (a) prepare—
    - (i) in the case of revocation, final accounts,
    - (ii) in the case of suspension, interim accounts,
 which (in particular) detail all sums held on behalf of clients,
  - (b) comply with any directions given under subsection (3).
- (3) The approved regulator may direct the licensed provider to take specified action (or refrain from doing something) if the approved regulator considers that to be necessary or expedient for safeguarding the interests of the licensed provider's legal services clients.
- (4) Directions given under subsection (3) may (in particular) require the licensed provider to make available to a relevant person or body any—



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- (a) document or information (of whatever kind) held in the licensed provider's possession or control which—
    - (i) relates to, or is held on behalf of, a client of the licensed provider, or
    - (ii) relates to any trust of which the licensed provider (or one of the designated persons within it) is sole trustee or co-trustee only with other designated persons in the licensed provider,
  - (b) sum of money held by the licensed provider—
    - (i) on behalf of a client,
    - (ii) subject to any trust of the kind mentioned in paragraph (a)(ii).
- (5) For the purposes of subsection (4), a relevant person or body is—
- (a) the particular client,
  - (b) the approved regulator,
  - (c) a provider of legal services that is properly instructed by the licensed provider, or the approved regulator, to act in place of the licensed provider.
- (6) The Court of Session may, on an application by the approved regulator, make an order—
- (a) confirming that the licensed provider is required to comply with a direction given under subsection (3),
  - (b) varying the direction or imposing such conditions as the Court considers appropriate in the circumstances,
  - (c) that, without the leave of the Court, no payment be made by any bank, building society or other body named in the order out of any account (or any sum otherwise deposited) in the name of the licensed provider.
- (7) Before making such an order, the Court must—
- (a) give the licensed provider and any other person with an interest an opportunity to be heard,
  - (b) be satisfied that the direction or (as the case may be) freezing of an account represents an appropriate course of action in all the circumstances of the case.
- (8) The approved regulator may recover from the licensed provider any expenditure reasonably incurred by the approved regulator in consequence of its taking action under this section.
- (9) Where a licensed provider has ceased to exist, its functions under (or arising by virtue of) this section fall—
- (a) to its former Head of Practice or (if unavailable) its former Head of Legal Services,
  - (b) if neither Head is available, to a person nominated by its approved regulator.
- (10) The Scottish Ministers may by regulations make further provision about the steps that are, in the circumstances within subsection (1), to be taken to safeguard the interests of clients of licensed providers.
- (11) In this section, a reference to a licensed provider includes (as the context requires) a former licensed provider.

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## 71 Distribution of client account

- (1) Any sums of the kind to which section 42 of the 1980 Act applies that are held in a client account (as referred to in that section) kept by a licensed provider are, in any of the events mentioned in subsection (2A) of that section, to be distributed in the same way as they would if they were subject to that section.
- (2) For the purpose of subsection (1), any reference in that section to an incorporated practice is to be read as if it were a reference to the licensed provider.

VALID FROM 02/07/2012

*Professional practice etc.*

## 72 Employing disqualified lawyer

- (1) Subsection (2) applies in relation to—
  - (a) a person who has been struck off the roll of solicitors or suspended from practice as a solicitor,
  - (b) a person—
    - (i) who has been suspended from practice as a registered European lawyer or whose registration as a registered European lawyer has been withdrawn, or
    - (ii) who has been suspended from practice as a registered foreign lawyer or whose registration as a registered foreign lawyer has been withdrawn,
  - (c) a person who has been prohibited (including by reason of a disqualification or another removal of a right to provide services) from—
    - (i) practising as an advocate,
    - (ii) acting as a conveyancing or executry practitioner,
    - (iii) acting as a litigation practitioner, or
    - (iv) acting as a confirmation agent or will writer within the meaning of Part 3,
  - (d) a body whose certificate of recognition as an incorporated practice has been revoked.
- (2) A licensed legal services provider must not employ or remunerate as a designated person—
  - (a) the person while the person is so debarred (however described in subsection (1)), or
  - (b) the body while the revocation subsists.
- (3) But subsection (2) is inoperative in relation to the person or (as the case may be) body if the licensed provider has its approved regulator's written authority that it is so inoperative in the circumstances of the particular case.
- (4) Any authority under subsection (3) may be given—

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- (a) for a specified period,
  - (b) with conditions attached.
- (5) A licensed provider may appeal to the Court of Session if it is aggrieved by—
- (a) the withholding of any such authority, or
  - (b) any conditions attached under subsection (4)(b).
- (6) On an appeal under subsection (5)—
- (a) the Court may direct the approved regulator on the matter as the Court considers appropriate,
  - (b) the Court's determination is final.
- (7) If a licensed provider wilfully contravenes—
- (a) subsection (2), or
  - (b) any conditions attached under subsection (4)(b),
- its approved regulator may revoke or suspend its licence.

### **73 Concealing disqualification**

- (1) Subsection (2) applies to—
- (a) a person who has been struck off the roll of solicitors or suspended from practice as a solicitor,
  - (b) a person—
    - (i) who has been suspended from practice as a registered European lawyer or whose registration as a registered European lawyer has been withdrawn, or
    - (ii) who has been suspended from practice as a registered foreign lawyer or whose registration as a registered foreign lawyer has been withdrawn,
  - (c) a person who has been prohibited (including by reason of a disqualification or another removal of a right to provide services) from—
    - (i) practising as an advocate,
    - (ii) acting as a conveyancing or executry practitioner,
    - (iii) acting as a litigation practitioner, or
    - (iv) acting as a confirmation agent or will writer within the meaning of Part 3.
- (2) The person is guilty of an offence if, while the person is so debarred (however described in subsection (1)), the person seeks or accepts employment by a licensed provider without previously informing it of the debarment.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Subsection (5) applies to a body whose certificate of recognition as an incorporated practice has been revoked.
- (5) The body is guilty of an offence if, while the revocation subsists, the body seeks or accepts employment by a licensed provider without previously informing it of the revocation.

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- (6) A body which commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **74 Pretending to be licensed**

- (1) A person commits an offence if the person—
- (a) pretends to be a licensed provider, or
  - (b) takes or uses any name, title, addition or description implying falsely that the person is a licensed provider.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **75 Professional privilege**

- (1) Subsection (2) applies to any communication made to or by—
- (a) a licensed provider in the course of its acting as such in its provision of legal services for any of its clients,
  - (b) a designated person (apart from a solicitor or advocate) within the licensed provider who is acting—
    - (i) in connection with its provision of such legal services, and
    - (ii) at the direction, and under the supervision, of a solicitor.
- (2) The communication is, in any legal proceedings, privileged from disclosure as if the licensed provider or (as the case may be) the person had at all material times been a solicitor acting for the client.
- (3) Subsection (4) applies to any special provision which—
- (a) is contained in an enactment or otherwise,
  - (b) relates to a solicitor, and
  - (c) concerns—
    - (i) the disclosure of information with respect to which a claim of professional privilege could be maintained, or
    - (ii) the production, seizure or removal of documents with respect to which such a claim could be maintained.
- (4) The provision has effect in relation to a licensed provider, and any designated person (apart from a solicitor) within a licensed provider, as it does in relation to a solicitor but with any necessary modifications.
- (5) This section is without prejudice to any other enactment or rule of law concerning professional or other privilege from disclosure (in particular, as applicable in relation to a solicitor).

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## CHAPTER 3

### FURTHER PROVISION

#### *Achieving regulatory aims*

#### **76 Input by the OFT**

- (1) The Scottish Ministers or (as the case may be) an approved regulator must, whenever consulting the OFT under this Part, request the OFT—
  - (a) to give such advice as it considers appropriate in relation to the matter concerned,
  - (b) in considering what advice to give, to have particular regard to whether the matter concerned would have (or be likely to have) the effect of preventing, or significantly restricting or distorting, competition within the legal services market.
- (2) The Scottish Ministers are or (as the case may be) the approved regulator is to take account of any advice given by the OFT within—
  - (a) the relevant consultation period, or
  - (b) otherwise—
    - (i) in the case of the Scottish Ministers, the period of 90 days beginning with the day on which they request the advice,
    - (ii) in the case of the approved regulator, the period of 30 days beginning on the day on which it requests the advice or such longer period not exceeding 90 days as it may agree with the OFT.
- (3) The Scottish Ministers may publish any advice duly given to them by the OFT.

VALID FROM 02/07/2012

#### **77 Role of approved regulators**

- (1) Subsections (2) to (4) apply in relation to the exercise by an approved regulator of its functions under this Part.
- (2) The approved regulator must, so far as practicable, act in a way which—
  - (a) is compatible with the regulatory objectives, and
  - (b) it considers most appropriate with a view to meeting those objectives.
- (3) The approved regulator must adopt best regulatory practice under which (in particular) regulatory activities should be—
  - (a) carried out—
    - (i) effectively (but without giving rise to unnecessary burdens),
    - (ii) in a way that is transparent, accountable, proportionate and consistent,
  - (b) targeted only at such cases as require action.
- (4) The approved regulator must seek to ensure that its licensed legal services providers have regard to the regulatory objectives.

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## **78 Policy statement**

- (1) An approved regulator must prepare and issue a statement of policy as to how, in exercising its functions under this Part, it will comply with its duties under section 77.
- (2) The approved regulator—
  - (a) may revise the policy statement,
  - (b) if it does so, must re-issue the policy statement.
- (3) The approved regulator may issue (or re-issue) the policy statement only with the approval of the Scottish Ministers.
- (4) The approved regulator must publish the policy statement as issued (or re-issued).
- (5) In exercising its functions under this Part, the approved regulator must have regard to the policy statement as issued (or re-issued).

### *Complaints*

## **79 Complaints about regulators**

- (1) Any complaint about an approved regulator is to be made to the Scottish Legal Complaints Commission.
- (2) The Commission is to determine whether or not the complaint is—
  - (a) one for which section 57E(1) of the 2007 Act makes provision,
  - (b) frivolous, vexatious or totally without merit.
- (3) And—
  - (a) if the Commission determines that the complaint falls within subsection (2) (a), the Commission is to proceed by reference to section 57E(1) of the 2007 Act,
  - (b) if the Commission determines that the complaint falls within subsection (2) (b), the Commission—
    - (i) must notify the complainer and the approved regulator accordingly (with reasons),
    - (ii) is not required to take any further action,
  - (c) if the Commission determines that the complaint does not fall within subsection (2)(a) or (b), the Commission must refer the complaint to the Scottish Ministers.
- (4) The Scottish Ministers must investigate any complaint about an approved regulator that is referred to them under subsection (3)(c).
- (5) Where the Scottish Ministers do not uphold the complaint, they must notify the complainer and the approved regulator accordingly (with reasons).
- (6) Where the Scottish Ministers uphold the complaint, they must—
  - (a) notify the complainer and the approved regulator accordingly (with reasons), and
  - (b) decide whether to proceed under section 38.

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- (7) The Scottish Ministers may delegate to the Commission any of their functions under subsections (4), (5) and (6)(a) (and, if they so delegate their function under subsection (4), they may also waive the referral requirement under subsection (3)(c)).
- (8) The Scottish Ministers may by regulations make further provision about complaints made about approved regulators (and how they are to be dealt with).

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## **80 Levy payable by regulators**

- (1) An approved regulator must pay to the Scottish Legal Complaints Commission—
  - (a) in respect of each financial year, an annual levy,
  - (b) if arising, a complaints levy.
- (2) The amount of the annual levy or complaints levy payable by an approved regulator—
  - (a) is to be determined by the Commission,
  - (b) may be—
    - (i) different from any amount payable as an annual general levy or (as the case may be) a complaints levy under Part 1 of the 2007 Act,
    - (ii) in either case, of different amounts (including nil) in different circumstances.
- (3) The complaints levy arises as respects an approved regulator where—
  - (a) the Scottish Ministers delegate to the Commission their function under section 79(4) in relation to a complaint made about the approved regulator, and
  - (b) the Commission upholds the complaint.
- (4) Before determining for a financial year the amount of the annual levy or complaints levy, the Commission must consult—
  - (a) each approved regulator (with particular reference to the proposed amount to be payable by it),
  - (b) the Scottish Ministers.

## **81 Complaints about providers**

In the 2007 Act, after Part 2 insert—

### **“PART 2A**

#### **SPECIAL PROVISION FOR LICENSED PROVIDERS**

### **57A Complaints about licensed providers**

- (1) Parts 1 and 2 apply in relation to complaints made about licensed legal services providers as they apply in relation to complaints made about practitioners.

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- (2) Subsection (1) is subject to—
  - (a) subsections (3) and (4), and
  - (b) such further modification to the operation of Parts 1 and 2 as the Scottish Ministers may by regulations make for the purposes of—
    - (i) subsection (1),
    - (ii) section 57B(4) and (5).
- (3) In relation to a services complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.
- (4) A conduct complaint may not be made about a licensed provider, but—
  - (a) such a complaint may be made about a practitioner within such a provider,
  - (b) the provisions relating to such a complaint remain (subject to such modification as to those provisions as is made under subsection (2)) applicable for the purposes of section 57B(4) and (5).
- (5) Where an approved regulator receives (from a person other than the Commission) a complaint about the conduct of, or any services provided by, a practitioner within one of its licensed providers, the approved regulator must without delay send to the Commission the complaint and any material that accompanies it.

#### **57B Regulatory complaints**

- (1) There is an additional type of complaint which applies only in relation to licensed providers (a “regulatory complaint”).
- (2) A regulatory complaint is where any person suggests that a licensed provider is failing (or has failed) to—
  - (a) have regard to the regulatory objectives,
  - (b) adhere to the professional principles,
  - (c) comply with—
    - (i) its approved regulator's regulatory scheme,
    - (ii) the terms and conditions of its licence.
- (3) In relation to a regulatory complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.
- (4) The procedure in respect of a regulatory complaint is (by virtue of section 57A(4)(b)) the same as it would be for a conduct complaint about a licensed provider, subject to such modification as to that procedure as is made under section 57A(2)(b).
- (5) The Commission and the approved regulator have (by virtue of section 57A(4)(b)) the same functions in relation to a regulatory complaint as they would have in relation to a conduct complaint about a licensed provider, subject to such modification as to those functions as is made under section 57A(2)(b).



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### 57C Levy, advice and guidance

- (1) A licensed provider must pay to the Commission—
  - (a) the annual general levy, and
  - (b) the complaints levy (if arising),in accordance with Part 1 (and in addition to any levy payable under that Part by a solicitor or other person within the licensed provider).
- (2) Section 29 applies for the purposes of subsection (1) as it applies for the purposes of sections 27(1) and 28(1).
- (3) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) and (2)—
  - (a) an approved regulator is to be regarded as a relevant professional organisation whose members are its licensed providers,
  - (b) a licensed provider is to be regarded—
    - (i) in connection with the annual general levy, as an individual person falling within the relevant category,
    - (ii) in connection with the complaints levy, as an individual practitioner of the relevant type.
- (4) But the amount of the annual general levy for a licensed provider may be—
  - (a) different from the amount to be paid by individuals,
  - (b) of different amounts (including nil) in different circumstances.
- (5) The Commission—
  - (a) must (so far as practicable) provide advice to any person who requests it as respects the process of making a regulatory complaint to the Commission,
  - (b) may issue guidance under section 40 to approved regulators and licensed providers as respects how licensed providers are to deal with regulatory complaints.

### 57D Recovery of levy

- (1) An approved regulator must—
  - (a) secure the collection by it, from its licensed providers, of the annual general levy due by them, and
  - (b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.
- (2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.
- (3) Subsection (4) of section 27 applies in relation to any sum due under section 57C(1)(a) (including interest) as it applies in relation to any sum due under subsection (1) of section 27.

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- (4) Subsection (3) of section 28 applies in relation to any sum due under section 57C(1)(b) (including interest) as it applies in relation to any sum due under subsection (1) of section 28.
- (5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—
  - (a) the approved regulator is to be regarded as the relevant professional organisation,
  - (b) each of its licensed providers is to be regarded—
    - (i) in relation to section 27(4), as an individual person falling within the relevant category,
    - (ii) in relation to section 28(3), as an individual practitioner of the relevant type.
- (6) Section 57C(1) is subject to subsection (1).

#### 57E **Handling complaints**

- (1) Parts 1 and 2 apply in relation to any complaint made about how an approved regulator has dealt with a regulatory complaint as they apply in relation to a handling complaint (relating to a conduct complaint) made about a relevant professional organisation.
- (2) Subsection (1) is subject to such modification to the operation of those Parts as the Scottish Ministers may by regulations make for the purposes of that subsection.

#### 57F **Effectiveness of compensation fund**

- (1) Section 39 also applies in relation to a compensation fund of its own that is maintained by an approved regulator in furtherance of section 24(2) of the Legal Services (Scotland) Act 2010.
- (2) For the application of section 39 by virtue of subsection (1)—
  - (a) any such compensation fund is to be regarded as falling within subsection (1)(c) of that section,
  - (b) the approved regulator is to be regarded as the relevant professional organisation.

#### 57G **Interpretation of Part 2A**

For the purposes of this Part—

“approved regulator”

“licensed legal services provider” (or “licensed provider”),

“professional principles”,

“regulatory objectives”

“regulatory scheme”

are to be construed in accordance with Part 2 of the Legal Services (Scotland) Act 2010.”.

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## Registers and lists

VALID FROM 02/07/2012

### 82 Register of approved regulators

- (1) The Scottish Ministers—
  - (a) must keep and publish a register of approved regulators,
  - (b) may do so in such manner as they consider appropriate.
- (2) The register is to include the following information in relation to each approved regulator—
  - (a) its contact details (including its address, website and telephone number),
  - (b) the date on which it was given the relevant approval under section 7,
  - (c) the date on which it was given the relevant authorisation under section 10 (and the duration of that authorisation (unlimited or the fixed period)),
  - (d) the categories of legal services to which that authorisation relates,
  - (e) details of any measure taken by the Scottish Ministers under section 38.

### 83 Registers of licensed providers

- (1) An approved regulator must keep and publish a register of its licensed legal services providers.
- (2) The register is to include the following information in relation to each licensed provider—
  - (a) its name and any place of business,
  - (b) the relevant details about its licence,
  - (c) the name of every non-solicitor investor in the licensed provider,
  - (d) the name of every person intimated to the approved regulator under paragraph 3 of schedule 8,
  - (e) the names and the dates of appointment of—
    - (i) its Head of Legal Services, and
    - (ii) its Head of Practice or, if applicable, each member of its Practice Committee (including with specific reference to section 53(3)),
  - (f) whether the licensed provider has been the subject of any disciplinary action and (if so) a description of that action.
- (3) In subsection (2)(b), the relevant details about a licensed provider's licence are—
  - (a) the date on which the licence was originally granted,
  - (b) the date on which it was most recently renewed,
  - (c) whether it is subject to any conditions,
  - (d) the date on which it will expire.
- (4) But, in the case of a former licensed provider, the relevant details are instead—
  - (a) the date on which the licence was originally granted,
  - (b) the period for which the licensed provider held a licence,
  - (c) the reason for the licensed provider ceasing to hold a licence.

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- (5) The Scottish Ministers may by regulations—
  - (a) make further provision about the information to be contained in the registers of licensed providers, and
  - (b) prescribe the manner in which those registers are to be kept and published.
- (6) In this section, a reference to a licensed provider includes a former licensed provider.

#### **84 Lists of disqualified persons**

- (1) An approved regulator must keep a list of the persons whom it has disqualified under section 56 (that is, from holding a certain position in a licensed legal services provider).
- (2) The list kept under subsection (1) must include the following information in relation to each person concerned—
  - (a) the person's name,
  - (b) the—
    - (i) name of any relevant licensed provider,
    - (ii) any relevant position held by the person as at the date of the disqualification,
  - (c) each position from which the person is disqualified,
  - (d) the date of disqualification and its duration (unlimited or the fixed period),
  - (e) the reasons for the disqualification.
- (3) An approved regulator must keep a list of the persons whom it has—
  - (a) determined as unfit under section 62 (that is, for being a non-solicitor investor in a licensed provider), or
  - (b) disqualified under section 65(1) (that is, from having an interest in a licensed provider).
- (4) The list kept under subsection (3) must include the following information in relation to each person concerned—
  - (a) the person's name,
  - (b) the name of any relevant licensed provider,
  - (c) the date of the determination or (as the case may be) disqualification,
  - (d) the grounds for the determination or (as the case may be) disqualification.
- (5) A list kept under this section must not include information relating to a person in respect of whom the determination or (as the case may be) disqualification—
  - (a) has been reversed on appeal, or
  - (b) otherwise, no longer applies.
- (6) The approved regulator must—
  - (a) publish the lists kept by it under this section, and
  - (b) notify the Scottish Ministers of any material alterations made to either of them.
- (7) The Scottish Ministers may by regulations—
  - (a) make further provision about the information to be contained in the lists kept under this section,
  - (b) prescribe the manner in which those lists are to be kept and published.

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### *Miscellaneous*

#### **85 Privileged material**

- (1) Subsection (2) applies to the publication under this Part of any—
  - (a) advice, report or notice, or
  - (b) other material.
- (2) For the purposes of the law on defamation, the publication is privileged.
- (3) But subsection (2) is ineffective if it is proved that the publication was made with malice.

#### **86 Immunity from damages**

- (1) Neither an approved regulator nor any of its officers, members or employees is liable in damages for any act or omission occurring in the exercise (or purported exercise) of its functions under this Part.
- (2) But subsection (1) is ineffective if it is shown that the act or omission was in bad faith.

#### **87 Appeal procedure**

- (1) This section applies in relation to an appeal to the sheriff under this Part.
- (2) The appeal is to be made by way of summary application.
- (3) In the appeal, the sheriff may—
  - (a) uphold, vary or quash the decision that is the subject of the appeal,
  - (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
- (4) The sheriff's determination in the appeal is final.

#### **88 Corporate offences**

- (1) Subsection (2) applies where—
  - (a) an offence under this Part is committed by a relevant organisation, and
  - (b) the commission of the offence—
    - (i) involves the connivance or consent of, or
    - (ii) is attributable to the neglect of, a responsible official of the organisation.
- (2) The official (as well as the organisation) commits the offence.
- (3) For the purpose of this section—
  - (a) a “relevant organisation” is—
    - (i) a company,

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- (ii) a limited liability partnership,
  - (iii) an ordinary partnership, or
  - (iv) any other body or association,
- (b) a “responsible official” is—
- (i) in the case of a company, a director, secretary, manager or other similar officer,
  - (ii) in the case of a limited liability partnership, a member,
  - (iii) in the case of an ordinary partnership, a partner,
  - (iv) in the case of another body or association, a person who is concerned in the management or control of its affairs,
- but in each case also extends to a person purporting to act in such a capacity.

### **89 Effect of professional or other rules**

- (1) Sections 121(5) and 124(3) respectively make provision (in connection with this Part) as to the effect of professional rules to which advocates and solicitors are subject.
- (2) Nothing in this Part affects the operation of any rule which regulates in respect of any matter the professional practice, conduct or discipline of other persons who provide professional services (in particular, as it may relate to their involvement in or with licensed legal services providers).
- (3) This Part is without prejudice to any function of a person or body—
  - (a) arising by virtue of the application of another enactment (or a regulatory rule made under another enactment), and
  - (b) to regulate in any respect the provision of any professional or other services by licensed legal services providers.

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**Changes to legislation:** There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010. (See end of Document for details)

VALID FROM 01/04/2011

## PART 3

### CONFIRMATION AND WILL WRITING SERVICES

#### CHAPTER 1

##### CONFIRMATION SERVICES

###### *Regulation of confirmation agents*

PROSPECTIVE

#### **90 Confirmation agents and services**

- (1) For the purposes of this Part, confirmation services are services that are—
  - (a) described in subsection (2), and
  - (b) provided (or offered)—
    - (i) to members of the public, and
    - (ii) for a fee, gain or reward.
- (2) The services are those of drawing or preparing papers on which to found or oppose an application for the confirmation of a person as the executor nominate or dative in relation to the estate of a deceased person.
- (3) It is immaterial for the description in subsection (2) whether or not the services also involve applying to the sheriff on behalf of the person so as to secure the person's confirmation as such (or taking other related action).
- (4) For the purposes of this Part, a confirmation agent is a person on whom, in accordance with an approving body's regulatory scheme, the right to provide confirmation services is conferred.

#### **91 Approving bodies**

- (1) For the purposes of this Chapter, an approving body is a professional or other body which is certified as such by the Scottish Ministers under section 92.
- (2) That is, following an application to them by the body under subsection (3).
- (3) An application to become an approving body must include—
  - (a) a copy of the applicant's proposed regulatory scheme (see section 92(1)(b)),
  - (b) a description of—
    - (i) the applicant's constitution and composition (including internal structure),
    - (ii) its activities.

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- (4) The applicant—
  - (a) must provide the Scottish Ministers with such other information as they may reasonably require for their consideration of its application,
  - (b) may withdraw its application at any time by giving them written notice to that effect.
- (5) There is no restriction on the number of approving bodies that may exist at any time.
- (6) The Scottish Ministers may by regulations prescribe fees that they may charge an applicant to become an approving body.

## **92 Certification of bodies**

- (1) The Scottish Ministers may certify the applicant as an approving body if they are satisfied that—
  - (a) the applicant is suitable to be an approving body,
  - (b) the applicant's proposed regulatory scheme is adequate (as determined with particular reference to section 93).
- (2) The Scottish Ministers may certify the applicant as an approving body—
  - (a) either—
    - (i) without limit of time, or
    - (ii) for a fixed period,
  - (b) with reference to a specified date from which the approving body may exercise its functions in relation to its regulatory scheme,
  - (c) subject to conditions.
- (3) The Scottish Ministers may, after consulting the approving body, vary (including by addition or deletion) any conditions imposed under subsection (2)(c).
- (4) Before deciding whether or not to certify the applicant as an approving body, the Scottish Ministers must consult—
  - (a) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
  - (b) such other person or body as they consider appropriate.
- (5) In consulting under subsection (4), the Scottish Ministers—
  - (a) must send a copy of the application to the OFT,
  - (b) may send—
    - (i) to any other consultee, a copy of the application,
    - (ii) to the OFT or any other consultee, a copy of any revised application.
- (6) The Scottish Ministers must, with reasons, notify the applicant if they intend to—
  - (a) refuse to certify it as an approving body, or
  - (b) certify it as such subject to conditions.
- (7) If notification is given to the applicant under subsection (6), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
  - (a) make representations to the Scottish Ministers,
  - (b) take such steps as it may consider expedient.



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- (8) The Scottish Ministers may by regulations make further provision about certification under this section, including (in particular)—
- (a) the process for seeking their certification,
  - (b) in relation to capability to act as an approving body, the criteria for their certification (including things that applicants must be able to demonstrate).

### **93 Regulatory schemes**

- (1) An approving body must—
- (a) make a regulatory scheme for—
    - (i) conferring on any of the individual persons within its membership the right to provide confirmation services, and
    - (ii) regulating the provision of confirmation services by the persons on whom (in accordance with the scheme) that right is conferred, and
  - (b) apply the scheme in relation to them.
- (2) The regulatory scheme is to—
- (a) describe the training requirements to be met by a prospective confirmation agent,
  - (b) incorporate a code of practice to which a confirmation agent is subject,
  - (c) require that a confirmation agent keep in place sufficient arrangements for professional indemnity,
  - (d) include rules about—
    - (i) the making and handling of any complaint about a confirmation agent,
    - (ii) the measures that may be taken by the approving body, in relation to a confirmation agent, if a conduct complaint (as construed by reference to section 2(1)(a) of the 2007 Act (and as if the confirmation agent were a practitioner to whom that section relates)) about the confirmation agent is upheld,
  - (e) allow a confirmation agent to make representations to the approving body before it takes any of the measures available to it by virtue of paragraph (d) (ii),
  - (f) cover such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as they may so specify).
- (3) The code of practice mentioned in subsection (2)(b) must—
- (a) set out the standards to be met by confirmation agents,
  - (b) make such further arrangements as to the professional practice, conduct or discipline of confirmation agents for which provision is (in the approving body's opinion) necessary or expedient,
  - (c) allow for—
    - (i) the rescission or suspension of, or attaching of conditions to the exercise of, the right of a confirmation agent to provide confirmation services if the agent contravenes the code of practice,
    - (ii) the suspension of that right of a confirmation agent if a complaint, suggesting that the agent is guilty of professional misconduct in relation to the provision of confirmation services, is made about the agent.

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- (4) A confirmation agent may appeal against a decision taken under the regulatory scheme to rescind or suspend, or attach conditions to the exercise of, the agent's right to provide confirmation services—
  - (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which that decision is intimated to the agent.
- (5) An approving body must, so far as practicable when exercising its functions under this Chapter, observe the regulatory objectives.

PROSPECTIVE

#### 94 Financial sanctions

- (1) Rules included in a regulatory scheme in pursuance of section 93(2)(d)(ii) may provide for the imposition of a financial penalty.
- (2) A financial penalty provided for by virtue of subsection (1) must not exceed the maximum amount permitted by the Scottish Ministers when giving their certification under section 92.
- (3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the approving body may collect it on their behalf).
- (4) A confirmation agent may appeal against a financial penalty (or the amount of a financial penalty) imposed on the agent by virtue of this section—
  - (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the penalty is intimated to the agent.
- (5) Where an appeal is made under subsection (4), no part of the penalty requires to be paid before the appeal is determined or withdrawn.

#### 95 Review of own performance

- (1) An approving body must review annually its performance.
- (2) In particular, a review is to cover the following matters—
  - (a) the approving body's compliance with section 93(5),
  - (b) the exercise of its functions in relation to its regulatory scheme,
  - (c) its compliance with any measures applying to it by virtue of section 100(3).
- (3) The approving body must send a report on the review to the Scottish Ministers.
- (4) The report must contain a copy of the approving body's annual accounts (but only so far as they are relevant in connection with its functions under this Chapter).
- (5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (6) The Scottish Ministers may by regulations make further provision about—
  - (a) the review of approved bodies' performance,
  - (b) reports on reviews of their performance.

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PROSPECTIVE

## 96 Pretending to be authorised

- (1) A person commits an offence if the person—
  - (a) pretends to be a confirmation agent (or otherwise pretends to have the right to provide confirmation services under this Part), or
  - (b) takes or uses any name, title, addition or description implying falsely that the person is a confirmation agent (or otherwise so implying that the person has the right to provide confirmation services under this Part).
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PROSPECTIVE

### *Other regulatory matters*

## 97 Revocation of certification

- (1) Subsection (2) applies where the Scottish Ministers are satisfied that an approving body has failed to comply with a direction under section 100(3).
- (2) The Scottish Ministers may—
  - (a) revoke the certification given to the approving body under section 92,
  - (b) require the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient in connection with the revocation.
- (3) The revocation under subsection (2) of the certification of an approving body has the effect, from the date on which the revocation becomes effective, of rescinding the right of each of its confirmation agents to provide confirmation services (so far as that right is conferred by the approving body in question).

## 98 Surrender of certification

- (1) An approving body may, with the prior agreement of the Scottish Ministers, surrender the certification given to it under section 92.
- (2) The approving body must—
  - (a) take all reasonable steps to mitigate such disruption to the clients of its confirmation agents as is likely to result from the surrender,
  - (b) in particular, take steps for ensuring that any relevant work is—
    - (i) completed, or
    - (ii) taken over by a suitably qualified person,before the date from which subsection (5) is operative.
- (3) The Scottish Ministers may direct the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient—

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- (a) for the purpose of subsection (2), or
  - (b) otherwise in connection with the surrender.
- (4) Before the Scottish Ministers may agree to the surrender, they must be satisfied that the approving body has complied (or will comply) with—
- (a) subsection (2), and
  - (b) any directions given to it under subsection (3).
- (5) The surrender of an approving body's certification under subsection (1) has, from the date on which the surrender becomes effective, the effect of extinguishing the right of each of its confirmation agents to provide confirmation services (so far as that right is conferred by the approving body in question).

## 99 Register and list

- (1) The Scottish Ministers—
- (a) must keep and publish a register of approving bodies,
  - (b) may do so in a such manner as they consider appropriate.
- (2) The register is to include the following information in relation to each approving body—
- (a) its contact details (including its address, website and telephone number),
  - (b) the date on which it was given the relevant certification under section 92.
- (3) An approving body must—
- (a) keep a list of its confirmation agents,
  - (b) give the Scottish Ministers a copy of the list whenever they request it.
- (4) An approving body must give the Scottish Ministers such information about its confirmation agents as the Scottish Ministers may reasonably request.

### *Ministerial functions*

## 100 Ministerial intervention

- (1) An approving body must—
- (a) provide such information about its performance in relation to its regulatory scheme as the Scottish Ministers may reasonably request,
  - (b) do so within 21 days beginning with the date of the request (or such longer period as the Scottish Ministers may allow).
- (2) An approving body—
- (a) if directed to do so by the Scottish Ministers, must—
    - (i) review its regulatory scheme (or any relevant part of it), and
    - (ii) report to them its findings and (if appropriate) inform them of any proposed amendment to the scheme,
  - (b) may amend its regulatory scheme so as to give effect to the proposed amendment, but—
    - (i) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,

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- (ii) the Scottish Ministers may not give their approval before they have consulted such person or body as they consider appropriate.
- (3) The Scottish Ministers may—
- (a) if, after consulting such person or body as they consider appropriate, they consider that an approving body's regulatory scheme is not (or is no longer) adequate, direct the approving body to amend the regulatory scheme in such manner as they may specify,
  - (b) if they are satisfied that an approving body has not complied with a requirement imposed on it by or under this Chapter, direct the approving body to take specified remedial action (or refrain from doing something).
- (4) An approving body must—
- (a) review annually the performance of its confirmation agents,
  - (b) prepare a report on the review,
  - (c) send a copy of the report to the Scottish Ministers.
- (5) The Scottish Ministers may by regulations make further provision—
- (a) about the review of confirmation agents,
  - (b) so far as it appears to them to be necessary for safeguarding the interests of clients of confirmation agents—
    - (i) concerning the functions of approving bodies,
    - (ii) relating to confirmation agents.

## CHAPTER 2

### WILL WRITING SERVICES

#### *Regulation of will writers*

PROSPECTIVE

#### **101 Will writers and services**

- (1) For the purposes of this Part, will writing services are services that are—
- (a) described in subsection (2), and
  - (b) provided (or offered)—
    - (i) to members of the public, and
    - (ii) for a fee, gain or reward.
- (2) The services are those of drawing or preparing wills or other testamentary writings.
- (3) For the purposes of this Part, a will writer is a person on whom, in accordance with an approving body's regulatory scheme, the right to provide will writing services is conferred.

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## **102 Approving bodies**

- (1) For the purposes of this Chapter, an approving body is a professional or other body which is certified as such by the Scottish Ministers under section 103.
- (2) That is, following an application to them by the body under subsection (3).
- (3) An application to become an approving body must include—
  - (a) a copy of the applicant's proposed regulatory scheme (see section 103(1)(b)),
  - (b) a description of—
    - (i) the applicant's constitution and composition (including internal structure),
    - (ii) its activities.
- (4) The applicant—
  - (a) must provide the Scottish Ministers with such other information as they may reasonably require for their consideration of its application,
  - (b) may withdraw its application at any time by giving them written notice to that effect.
- (5) There is no restriction on the number of approving bodies that may exist at any time.
- (6) The Scottish Ministers may by regulations prescribe fees that they may charge an applicant to become an approving body.

## **103 Certification of bodies**

- (1) The Scottish Ministers may certify the applicant as an approving body if they are satisfied that—
  - (a) the applicant is suitable to be an approving body,
  - (b) the applicant's proposed regulatory scheme is adequate (as determined with particular reference to section 104).
- (2) The Scottish Ministers may certify the applicant as an approving body—
  - (a) either—
    - (i) without limit of time, or
    - (ii) for a fixed period,
  - (b) with reference to a specified date from which the approving body may exercise its functions in relation to its regulatory scheme,
  - (c) subject to conditions.
- (3) The Scottish Ministers may, after consulting the approving body, vary (including by addition or deletion) any conditions imposed under subsection (2)(c).
- (4) Before deciding whether or not to certify the applicant as an approving body, the Scottish Ministers must consult—
  - (a) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
  - (b) such other person or body as they consider appropriate.
- (5) In consulting under subsection (4), the Scottish Ministers—
  - (a) must send a copy of the application to the OFT,
  - (b) may send—

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- (i) to any other consultee, a copy of the application,
  - (ii) to the OFT or any other consultee, a copy of any revised application.
- (6) The Scottish Ministers must, with reasons, notify the applicant if they intend to—
- (a) refuse to certify it as an approving body, or
  - (b) certify it as such subject to conditions.
- (7) If notification is given to the applicant under subsection (6), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
- (a) make representations to the Scottish Ministers,
  - (b) take such steps as it may consider expedient.
- (8) The Scottish Ministers may by regulations make further provision about certification under this section, including (in particular)—
- (a) the process for seeking their certification,
  - (b) in relation to capability to act as an approving body, the criteria for their certification (including things that applicants must be able to demonstrate).

#### **104 Regulatory schemes**

- (1) An approving body must—
- (a) make a regulatory scheme for—
    - (i) conferring on any of the individual persons within its membership the right to provide will writing services, and
    - (ii) regulating the provision of will writing services by the persons on whom (in accordance with the scheme) that right is conferred, and
  - (b) apply the scheme in relation to them.
- (2) The regulatory scheme is to—
- (a) describe the training requirements to be met by a prospective will writer,
  - (b) incorporate a code of practice to which a will writer (and anyone acting on behalf of the will writer in relation to will writing services) is subject,
  - (c) require that a will writer keep in place sufficient arrangements for professional indemnity,
  - (d) include rules about—
    - (i) the making and handling of any complaint about a will writer,
    - (ii) the measures that may be taken by the approving body, in relation to a will writer, if a conduct complaint (as construed by reference to section 2(1)(a) of the 2007 Act (and as if the will writer were a practitioner to whom that section relates)) about the will writer is upheld,
  - (e) allow a will writer to make representations to the approving body before it takes any of the measures available to it by virtue of paragraph (d)(ii),
  - (f) cover such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as they may so specify).
- (3) The code of practice mentioned in subsection (2)(b) must—
- (a) set out the standards to be met by will writers (and persons acting on their behalf in relation to will writing services),

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- (b) except in such circumstances as the approving body considers appropriate, prohibit the drawing or preparation of a will or other testamentary writing by a will writer which provides for the writer to be a beneficiary,
  - (c) require a will writer who provides the service of storing wills or other testamentary writings to keep in place sufficient arrangements for the storage of such documents (including arrangements in the event of the writer ceasing to provide will writing services),
  - (d) make such further arrangements as to the professional practice, conduct or discipline of will writers for which provision is (in the approving body's opinion) necessary or expedient,
  - (e) provide that it is a breach of the code of practice for a will writer to fail to comply with the writer's duties under any enactment specified in the code,
  - (f) provide that a breach of the code of practice by a person acting on behalf of a will writer in relation to will writing services constitutes a breach of the code of practice by the writer,
  - (g) allow for—
    - (i) the rescission or suspension of, or attaching of conditions to the exercise of, the right of a will writer to provide will writing services if the writer contravenes the code of practice,
    - (ii) the suspension of that right of a will writer if a complaint, suggesting that the writer is guilty of professional misconduct in relation to the provision of will writing services, is made about the writer.
- (4) A will writer may appeal against a decision taken under the regulatory scheme to rescind or suspend, or attach conditions to the exercise of, the writer's right to provide will writing services—
- (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which that decision is intimated to the writer.
- (5) An approving body must, so far as practicable when exercising its functions under this Chapter, observe the regulatory objectives.

PROSPECTIVE

## 105 Financial sanctions

- (1) Rules included in a regulatory scheme in pursuance of section 104(2)(d)(ii) may provide for the imposition of a financial penalty.
- (2) A financial penalty provided for by virtue of subsection (1) must not exceed the maximum amount permitted by the Scottish Ministers when giving their certification under section 103.
- (3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the approving body may collect it on their behalf).
- (4) A will writer may appeal against a financial penalty (or the amount of a financial penalty) imposed on the writer by virtue of this section—
  - (a) to the sheriff,



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- (b) within the period of 3 months beginning with the date on which the penalty is intimated to the writer.
- (5) Where an appeal is made under subsection (4), no part of the penalty requires to be paid before the appeal is determined or withdrawn.

#### **106 Review of own performance**

- (1) An approving body must review annually its performance.
- (2) In particular, a review is to cover the following matters—
  - (a) the approving body's compliance with section 104(5),
  - (b) the exercise of its functions in relation to its regulatory scheme,
  - (c) its compliance with any measures applying to it by virtue of section 111(3).
- (3) The approving body must send a report on the review to the Scottish Ministers.
- (4) The report must contain a copy of the approving body's annual accounts (but only so far as they are relevant in connection with its functions under this Chapter).
- (5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (6) The Scottish Ministers may by regulations make further provision about—
  - (a) the review of approved bodies' performance,
  - (b) reports on reviews of their performance.

PROSPECTIVE

#### **107 Pretending to be authorised**

- (1) A person commits an offence if the person—
  - (a) pretends to be a will writer (or otherwise pretends to have the right to provide will writing services under this Part), or
  - (b) takes or uses any name, title, addition or description implying falsely that the person is a will writer (or otherwise so implying that the person has the right to provide will writing services under this Part).
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PROSPECTIVE

*Other regulatory matters*

#### **108 Revocation of certification**

- (1) Subsection (2) applies where the Scottish Ministers are satisfied that an approving body has failed to comply with a direction under section 111(3).
- (2) The Scottish Ministers may—

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- (a) revoke the certification given to the approving body under section 103,
  - (b) require the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient in connection with the revocation.
- (3) The revocation under subsection (2) of the certification of an approving body has the effect, from the date on which the revocation becomes effective, of rescinding the right of each of its will writers to provide will writing services (so far as that right is conferred by the approving body in question).

### **109 Surrender of certification**

- (1) An approving body may, with the prior agreement of the Scottish Ministers, surrender the certification given to it under section 103.
- (2) The approving body must—
- (a) take all reasonable steps to mitigate such disruption to the clients of its will writers as is likely to result from the surrender,
  - (b) in particular, take steps for ensuring that any relevant work is—
    - (i) completed, or
    - (ii) taken over by a suitably qualified person,
 before the date from which subsection (5) is operative.
- (3) The Scottish Ministers may direct the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient—
- (a) for the purpose of subsection (2), or
  - (b) otherwise in connection with the surrender.
- (4) Before the Scottish Ministers may agree to the surrender, they must be satisfied that the approving body has complied (or will comply) with—
- (a) subsection (2), and
  - (b) any direction given to it under subsection (3).
- (5) The surrender of an approving body's certification under subsection (1) has, from the date on which the surrender becomes effective, the effect of extinguishing the right of each of its will writers to provide will writing services (so far as that right is conferred by the approving body in question).

### **110 Register and list**

- (1) The Scottish Ministers—
- (a) must keep and publish a register of approving bodies,
  - (b) may do so in such manner as they consider appropriate.
- (2) The register is to include the following information in relation to each approving body—
- (a) its contact details (including its address, website and telephone number),
  - (b) the date on which it was given the relevant certification under section 103.
- (3) An approving body must—
- (a) keep a list of its will writers,
  - (b) give the Scottish Ministers a copy of the list whenever they request it.

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- (4) An approving body must give the Scottish Ministers such information about its will writers as the Scottish Ministers may reasonably request.

### *Ministerial functions*

#### **111 Ministerial intervention**

- (1) An approving body must—
- (a) provide such information about its performance in relation to its regulatory scheme as the Scottish Ministers may reasonably request,
  - (b) do so within 21 days beginning with the date of the request (or such longer period as the Scottish Ministers may allow).
- (2) An approving body—
- (a) if directed to do so by the Scottish Ministers, must—
    - (i) review its regulatory scheme (or any relevant part of it), and
    - (ii) report to them its findings and (if appropriate) inform them of any proposed amendments to the scheme,
  - (b) may amend its regulatory scheme so as to give effect to the proposed amendment, but—
    - (i) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,
    - (ii) the Scottish Ministers may not give their approval before they have consulted such person or body as they consider appropriate.
- (3) The Scottish Ministers may—
- (a) if, after consulting such person or body as they consider appropriate, they consider that an approving body's regulatory scheme is not (or is no longer) adequate, direct the approving body to amend the regulatory scheme in such manner as they may specify,
  - (b) if they are satisfied that an approving body has not complied with a requirement imposed on it by or under this Chapter, direct the approving body to take specified remedial action (or refrain from doing something).
- (4) An approving body must—
- (a) review annually the performance of its will writers,
  - (b) prepare a report on the review,
  - (c) send a copy of the report to the Scottish Ministers.
- (5) The Scottish Ministers may by regulations make further provision—
- (a) about the review of will writers,
  - (b) so far as it appears to them to be necessary for safeguarding the interests of clients of will writers—
    - (i) concerning the functions of approving bodies,
    - (ii) relating to will writers.

*Status:* Point in time view as at 10/11/2010. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010. (See end of Document for details)

## 112 Step-in by Ministers

- (1) The Scottish Ministers may by regulations make provision which establishes a body with a view to its becoming an approving body.
- (2) The Scottish Ministers may by regulations make provision which allows them to act as an approving body in such circumstances as the regulations may prescribe.
- (3) Regulations under subsection (2) may provide for this Chapter to apply with or subject to such modifications as the regulations may specify.
- (4) No regulations are to be made under subsection (1) or (2) unless the Scottish Ministers believe that their intervention under this section is necessary, as a last resort, in order to ensure that the provision of will writing services by will writers is regulated effectively.

### CHAPTER 3

#### FURTHER PROVISION

PROSPECTIVE

## 113 Regard to [<sup>F1</sup>CMA] input

- (1) The Scottish Ministers, whenever consulting the [<sup>F2</sup>CMA] under section 92(4)(a) or 103(4)(a), must request the [<sup>F2</sup>CMA]—
  - (a) to give such advice as it considers appropriate in relation to the matter concerned,
  - (b) in considering what (if any) advice to give, to have particular regard to whether the matter concerned would have (or be likely to have) the effect of preventing, or significantly restricting or distorting, competition within the legal services market.
- (2) The Scottish Ministers are to take account of any advice given by the [<sup>F2</sup>CMA] within—
  - (a) the relevant consultation period, or
  - (b) otherwise, the period of 90 days beginning with the day on which they request the advice.
- (3) The Scottish Ministers may publish any advice duly given to them by the [<sup>F2</sup>CMA].

#### Textual Amendments

- F1** Word in s. 113 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 200(3); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 113(1)-(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 200(2); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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## **114 Complaints about services**

In the 2007 Act, after Part 2A (inserted by section 81) insert—

### **“PART 2B**

#### **SPECIAL PROVISION FOR CONFIRMATION AGENTS AND WILL WRITERS**

##### **57H Complaints about agents and writers**

- (1) Parts 1 and 2 apply in relation to complaints made about confirmation agents and will writers as they apply in relation to complaints made about practitioners.
- (2) Subsection (1) is subject to—
  - (a) subsection (3), and
  - (b) such further modification to the operation of Parts 1 and 2 as the Scottish Ministers may by regulations make for the purposes of subsection (1).
- (3) In relation to a services or conduct complaint about a confirmation agent or will writer, the relevant approving body is to be regarded as the relevant professional organisation.

##### **57I Handling complaints**

- (1) Parts 1 and 2 apply in relation to any complaint made about how an approving body has dealt with a conduct complaint as they apply in relation to a handling complaint (relating to a conduct complaint) made about a relevant professional organisation.
- (2) Subsection (1) is subject to such modification to the operation of those Parts as the Scottish Ministers may by regulations make for the purposes of that subsection.

##### **57J Levy payable**

- (1) A confirmation agent must pay to the Commission—
  - (a) the annual general levy, and
  - (b) the complaints levy (if arising),in accordance with Part 1.
- (2) A will writer must pay to the Commission—
  - (a) the annual general levy, and
  - (b) the complaints levy (if arising),in accordance with Part 1.
- (3) Section 29 applies for the purposes of subsections (1) and (2) as it applies for the purposes of sections 27(1) and 28(1).
- (4) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) to (3)—

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- (a) an approving body is to be regarded as a relevant professional organisation whose members are its confirmation agents or (as the case may be) will writers,
- (b) a confirmation agent or (as the case may be) will writer is to be regarded—
  - (i) in connection with the annual general levy, as an individual person falling within the relevant category,
  - (ii) in connection with the complaints levy, as an individual practitioner of the relevant type.

#### **57K Recovery of levy**

- (1) An approving body must—
  - (a) secure the collection by it, from its confirmation agents or (as the case may be) will writers, of the annual general levy due by them, and
  - (b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.
- (2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.
- (3) Subsection (4) of section 27 applies in relation to any sum due under section 57J(1)(a) and (2)(a) (including interest) as it applies in relation to any sum due under subsection (1) of section 27.
- (4) Subsection (3) of section 28 applies in relation to any sum due under section 57J(1)(b) and (2)(b) (including interest) as it applies in relation to any sum due under subsection (1) of section 28.
- (5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—
  - (a) the approving body is to be regarded as the relevant professional organisation,
  - (b) each of its confirmation agents or (as the case may be) will writers is to be regarded—
    - (i) in relation to section 27(4), as an individual person falling within the relevant category,
    - (ii) in relation to section 28(3), as an individual practitioner of the relevant type.
- (6) Section 57J(1) and (2) is subject to subsection (1).

#### **57L Interpretation of Part 2B**

For the purposes of this Part—  
 “approving body”,  
 “confirmation agent”,  
 “will writer”,

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are to be construed in accordance with Part 3 of the Legal Services (Scotland) Act 2010.”.

PROSPECTIVE

### 115 Privilege and immunity

- (1) For the purposes of the law on defamation, the publication under this Part of any material is privileged unless it is proved that the publication was made with malice.
- (2) Neither an approving body nor any of its officers, members or employees is liable in damages for any act or omission occurring in the exercise (or purported exercise) of its functions under this Part unless it is shown that the act or omission was in bad faith.

PROSPECTIVE

### 116 Appeal procedure

- (1) This section applies in relation to an appeal to the sheriff under this Part.
- (2) The appeal is to be made by way of summary application.
- (3) In the appeal, the sheriff may—
  - (a) uphold, vary or quash the decision that is the subject of the appeal,
  - (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
- (4) The sheriff's determination in the appeal is final.

PROSPECTIVE

### 117 Corporate offences

- (1) Subsection (2) applies where—
  - (a) an offence under this Part is committed by a relevant organisation, and
  - (b) the commission of the offence—
    - (i) involves the connivance or consent of, or
    - (ii) is attributable to the neglect of, a responsible official of the organisation.
- (2) The official (as well as the organisation) commits the offence.
- (3) For the purpose of this section—
  - (a) a “relevant organisation” is—
    - (i) a company,
    - (ii) a limited liability partnership,
    - (iii) an ordinary partnership, or

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- (iv) any other body or association,
- (b) a “responsible official” is—
- (i) in the case of a company, a director, secretary, manager or other similar officer,
  - (ii) in the case of a limited liability partnership, a member,
  - (iii) in the case of an ordinary partnership, a partner,
  - (iv) in the case of another body or association, a person who is concerned in the management or control of its affairs,
- but in each case also extends to a person purporting to act in such a capacity.

PROSPECTIVE

## 118 Consequential modification

- (1) In the Confirmation of Executors (Scotland) Act 1858, in section 2 (petition to commissary), after “1990” insert “ or by a confirmation agent within the meaning of Part 3 of the Legal Services (Scotland) Act 2010 ”.
- (2) In the 1980 Act—
  - (a) in section 32 (offence for unqualified persons to prepare certain documents)—
    - (i) in subsection (1), after paragraph (c) insert “or
    - (d) any will or other testamentary writing,”
    - (ii) in subsection (2)(a), for “or papers” substitute “ , papers, will or testamentary writing ”,
    - (iii) in subsection (2C), after “1990” insert “ or to a confirmation agent within the meaning of Part 3 of the 2010 Act ”,
    - (iv) after subsection (2C) insert—
 

“(2D) Subsection (1)(d) does not apply to a will writer within the meaning of Part 3 of the 2010 Act.”,
  - (b) in paragraph 1A of Schedule 4 (constitution, procedure and powers of Tribunal), after head (b)(ii) insert—
 

“(ia) confirmation agents or will writers within the meaning of Part 3 of the 2010 Act;”.
- (3) In section 12A (register of advice organisations) of the 1986 Act, after subsection (2) (b) insert—
 

“(ba) is a confirmation agent or will writer within the meaning of Part 3 of the Legal Services (Scotland) Act 2010;”.
- (4) In paragraph 2 of schedule 1 (the Scottish Legal Complaints Commission) to the 2007 Act, after sub-paragraph (6)(b) insert—
 

“(ba) confirmation agents or will writers within the meaning of Part 3 of the Legal Services (Scotland) Act 2010;”.



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VALID FROM 01/04/2011

## PART 4

### THE LEGAL PROFESSION

#### CHAPTER 1

##### APPLYING THE REGULATORY OBJECTIVES

#### 119 Application by the profession

- (1) Each of the regulatory authorities mentioned in subsection (2) must, so far as practicable when exercising the authority's regulatory functions (as defined in subsection (3)), act in a way which—
  - (a) is compatible with the regulatory objectives, and
  - (b) it considers most appropriate with a view to meeting those objectives.
- (2) For the purpose of this section, the regulatory authorities are—
  - (a) the Court of Session,
  - (b) the Lord President,
  - (c) the Faculty of Advocates,
  - (d) the Council of the Law Society,
  - (e) any other person who or body that has regulatory functions in relation to the provision of legal services by legal practitioners (of any type).
- (3) For the purpose of this section, the regulatory functions of a regulatory authority—
  - (a) are its functions of regulating in respect of any matter the professional practice, conduct and discipline of legal practitioners (of any type),
  - (b) include its functions of making professional or regulatory rules to which legal practitioners (of any type) are subject.
- (4) In subsections (2) and (3), “legal practitioners” means—
  - (a) solicitors (including firms of solicitors) or incorporated practices,
  - (b) advocates,
  - (c) conveyancing or executry practitioners, or
  - (d) litigation practitioners.

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VALID FROM 01/06/2011

## CHAPTER 2

### FACULTY OF ADVOCATES

#### 120 Regulation of the Faculty

- (1) The Court of Session is responsible—
  - (a) for—
    - (i) admitting persons to (and removing persons from) the office of advocate,
    - (ii) prescribing the criteria and procedure for admission to (and removal from) the office of advocate,
  - (b) for regulating the professional practice, conduct and discipline of advocates.
- (2) The Court's responsibilities within subsection (1)(a)(ii) and (b) are exercisable on its behalf, in accordance with such provision as it may make for the purpose, by—
  - (a) the Lord President, or
  - (b) the Faculty of Advocates.

#### 121 Professional rules

- (1) Subsections (2) and (3) apply to any rule which—
  - (a) prescribes the criteria or procedure for admission to (or removal from) the office of advocate, or
  - (b) regulates in respect of any matter the professional practice, conduct or discipline of advocates.
- (2) If the rule is made by the Faculty, the rule—
  - (a) is of no effect unless it has been approved by the Lord President (and may not be revoked unless its revocation has been approved by the Lord President),
  - (b) must be published by the Faculty.
- (3) In any other case, the rule—
  - (a) is of no effect unless the Faculty has been consulted on it (and may not be revoked unless the Faculty has been consulted on its revocation),
  - (b) requires—
    - (i) where made by the Lord President, to be published,
    - (ii) where made by the Court of Session, to be contained in an Act of Sederunt.
- (4) Neither this section nor section 122 affects the validity of any rule—
  - (a) that was in force immediately prior to the commencement of this section, and
  - (b) which regulates in respect of any matter the professional practice, conduct or discipline of advocates.

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- (5) Nothing in Part 2 affects the operation of any rule which regulates in respect of any matter the professional practice, conduct or discipline of advocates (in particular, as it may relate to their involvement in or with licensed legal services providers).

## 122 Particular rules

- (1) Subsection (2) applies to any rule—
- (a) which regulates in respect of any matter the professional practice, conduct or discipline of advocates, and
  - (b) under which an advocate is prohibited from forming a legal relationship with another advocate, or any other person, for the purpose of their jointly offering professional services to the public.
- (2) The rule is of no effect unless it has been approved by the Scottish Ministers after they have consulted the OFT.
- (3) Subsection (2) is without prejudice to section 121(2) and (3).
- (4) In section 31 (rules of conduct etc.) of the 1990 Act, subsection (1) is repealed.

## CHAPTER 3

### SOLICITORS AND OTHER REPRESENTATIVES

#### *Removal of practising restrictions*

VALID FROM 02/07/2012

## 123 Licensed providers as qualified persons

- (1) In section 26 (offence for solicitors to act as agents for unqualified persons) of the 1980 Act, in subsection (3), after “does not include” insert “ a licensed legal services provider, ”.
- (2) In section 30 (liability for fees of other solicitor) of the 1980 Act—
- (a) after “incorporated practice” in the second place where it occurs insert “ or a licensed legal services provider ”,
  - (b) for “other solicitor or incorporated practice” substitute “ employed party ”,
  - (c) for “other solicitor's or incorporated practice's” substitute “party's”.
- (3) In section 31 (offence for unqualified persons to pretend to be solicitor or notary public) of the 1980 Act—
- (a) the unnumbered block of text (from “In” to “practice.”) between subsections (1) and (2) is repealed,
  - (b) after subsection (2) insert—
    - “(2A) This section does not apply to an incorporated practice.
    - (2B) This section does not apply in relation to the taking or using by a licensed legal services provider of a name, title, addition

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or description if the licensed provider has the Society's written authority for using it.

(2C) For the purpose of subsection (2B), the Council are to make rules which—

- (a) set the procedure for getting the Society's authority (and specify the conditions that the Society may impose if it gives that authority),
- (b) specify the grounds on which the Society may refuse to give that authority (and require the Society to give reasons in writing if it refuses to give that authority)."

(4) In section 32 (offence for unqualified persons to prepare certain documents) of the 1980 Act, after paragraph (e) of subsection (2) insert “; or

(ea) a licensed legal services provider;”.

(5) In section 33 (unqualified persons not entitled to fees etc.) of the 1980 Act—

- (a) the first unnumbered block of text (from “Subject” to “matter.”) becomes subsection “ (1) ” and the second unnumbered block of text (from “This” to “cause.”) becomes subsection “ (2) ”,
- (b) in subsection (2) (as so numbered), after “incorporated practice” insert “ or a licensed legal services provider ”.

(6) In section 65(1) (interpretation) of the 1980 Act—

(a) after the entry for “the 2007 Act” insert—

““the 2010 Act” means the Legal Services (Scotland) Act 2010;”,

(b) at the appropriate alphabetical place insert—

““licensed legal services provider” (or “licensed provider”) is to be construed in accordance with Part 2 of the 2010 Act;”.

(7) In section 17 (qualified conveyancers) of the 1990 Act, in subsection (23)—

(a) after paragraph (b) insert—

“(ba) a licensed legal services provider within the meaning of Part 2 of the Legal Services (Scotland) Act 2010;”,

(b) after the subsequent “incorporated practice” insert “ , licensed provider ”.

VALID FROM 02/07/2012

## **124 Practice rules for licensed providers**

(1) After section 33B of the 1980 Act insert—

### **“33C Licensed legal services providers**

(1) Subsection (2) applies to any rule made under section 34 which prohibits or unduly restricts the—

- (a) involvement of solicitors in or with, or employment of solicitors by, licensed legal services providers,
- (b) provision of services by licensed providers, or

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- (c) operation of licensed providers in other respects.
- (2) The rule is of no effect in so far as it does so (and for this purpose it is immaterial when the rule was made).
- (3) The reference in subsection (1)(a) to solicitors does not include a solicitor who is disqualified from practice by reason of having been—
  - (a) struck off (or removed from) the roll, or
  - (b) suspended from practice.”.
- (2) In addition—
  - (a) in section 34 (rules as to professional practice, conduct and discipline) of the 1980 Act—
    - (i) in subsection (1A)(f), for “, or incorporated practices which, are partners in or directors of multi-disciplinary practices” substitute “ have an interest in or are employed by (or otherwise within) licensed legal services providers ”,
    - (ii) subsection (3A) is repealed,
  - (b) in section 64A(1) of that Act, paragraph (b) and the word “; or” immediately preceding it are repealed,
  - (c) in section 64B of that Act, the words “or such as is mentioned in section 34(3A)” are repealed,
  - (d) in section 64D(6) of that Act, for “sections 25A(9) or (10) and 34(3A)” substitute “ section 25A(9) or (10) ”,
  - (e) in section 65(1) of that Act—
    - (i) the definition of “multi-disciplinary practice” is repealed,
    - (ii) in the definition of “unqualified person”, the words “, other than a multi-disciplinary practice,” are repealed,
  - (f) in section 17(23) of the 1990 Act—
    - (i) paragraph (c) is repealed,
    - (ii) the subsequent words “, multi-disciplinary practice” are repealed,
  - (g) in paragraph 29(15) of Schedule 8 to that Act—
    - (i) in head (c), the insertion (into section 65(1) of the 1980 Act) of the definition of “multi-disciplinary practice” is repealed,
    - (ii) head (f) and the word “and” immediately preceding it are repealed.
- (3) Subject to section 33C of the 1980 Act, nothing in Part 2 affects the operation of any rule which regulates in respect of any matter the professional practice, conduct or discipline of solicitors.

## 125 Citizens advice bodies

- (1) In section 26 of the 1980 Act, in subsection (2), after “law centre” insert “ or a citizens advice body ”.
- (2) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—
  - ““citizens advice body” means an association which is formed (and operates) —
  - (a) otherwise than for the purpose of making a profit, and

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- (b) with the sole or primary objective of providing legal and other advice (including information) to the public for no fee, gain or reward;”.
- (3) The Scottish Ministers may by regulations modify the definition of “citizens advice body” in section 65(1) of the 1980 Act.
- (4) Before making regulations under subsection (3), the Scottish Ministers must consult—
  - (a) the Lord President,
  - (b) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate.

VALID FROM 01/09/2011

### *Lay representation*

#### **126 Court of Session rules**

In the Court of Session Act 1988—

- (a) in section 5 (power to regulate procedure), after paragraph (ee) insert—
  - “(ef) to permit a lay representative, when appearing at a hearing in any category of cause along with a party to the cause, to make oral submissions to the Court on the party's behalf.”,
- (b) after section 5 insert—

#### **“5A Rules for lay representation**

- (1) Rules under section 5(ef)—
  - (a) are to apply to situations in which the party is not otherwise represented,
  - (b) may specify other conditions by reference to which the rules are to apply.
- (2) Section 5(ef) is subject to any enactment under which special provision may be made for a party to a particular type of case before the Court to be represented by a lay representative.
- (3) In section 5(ef) and this section, a “lay representative” is a person who is not—
  - (a) a solicitor,
  - (b) an advocate, or
  - (c) one having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”.

#### **127 Sheriff court rules**

In the Sheriff Courts (Scotland) Act 1971—

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- (a) in section 32 (power of Court of Session to regulate civil procedure), in subsection (1), after paragraph (m) insert—
- “(n) permitting a lay representative, when appearing at a hearing in any category of civil proceedings along with a party to the proceedings, to make oral submissions to the sheriff on the party's behalf.”,
- (b) after section 32 insert—

**“32A Rules for lay representation**

- (1) Rules under section 32(1)(n)—
- (a) are to apply to situations in which the party is not otherwise represented,
- (b) may specify other conditions by reference to which the rules are to apply.
- (2) Section 32(1)(n)—
- (a) does not restrict the operation of section 36(1),
- (b) is subject to any enactment (apart from section 36(1)) under which special provision may be made for a party to a particular type of case before the Court to be represented by a lay representative.
- (3) In section 32(1)(n) and this section, a “lay representative” is a person who is not—
- (a) a solicitor,
- (b) an advocate, or
- (c) one having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.”.

*Guarantee Fund*

**128 Use of Guarantee Fund**

- (1) In section 43 (Guarantee Fund) of the 1980 Act—
- (a) in subsection (2)—
- (i) the word “or” immediately preceding paragraph (b) is repealed,
- (ii) in paragraph (b), after “director” insert “, member ”,
- (iii) after paragraph (b) insert “; or
- (c) any licensed legal services provider or person within it in connection with its provision of legal services (with the same meaning as for Part 2 of the 2010 Act), even if—
- (i) the Society is not its approved regulator, or
- (ii) subsequent to the act concerned it has ceased to operate.”,
- (b) in subsection (3)—

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- (i) in paragraph (cc), after “director” in the second place where it occurs insert “, member ”,
- (ii) after paragraph (cc) insert—
  - “(cd) to a licensed provider or any investor or person who owns, manages or controls or is within the licensed provider in respect of a loss suffered by it or any such person in connection with the licensed provider's provision of legal services by reason of dishonesty on the part of any such persons;”,
- (c) in subsection (7)(c), after “incorporated practice” insert “ or a licensed provider ”,
- (d) after subsection (7) insert—
  - “(8) In the case of licensed providers, this section and Part I of Schedule 3 apply in relation to (and only to) such licensed providers as are regulated by an approved regulator that in furtherance of section 24(4) of the 2010 Act does not maintain its own compensation fund as referred to in that section.
  - (9) In this section and paragraph 1 of Schedule 3—
    - “approved regulator”,
    - “investor”,
 are to be construed in accordance with Part 2 of the 2010 Act.”.
- (2) In section 43 of the 1980 Act—
  - (a) in subsection (2), after paragraph (a) insert—
    - “(aa) any conveyancing or executry practitioner or an employee of the practitioner in connection with the practitioner's practice as such, even if subsequent to the act concerned the practitioner has ceased to provide conveyancing or executry services;”,
  - (b) in subsection (3), after paragraph (c) insert—
    - “(ca) to a conveyancing or executry practitioner in respect of a loss suffered by reason of dishonesty on the part of a partner or employee of the practitioner in connection with the practitioner's practice as such;”.
- (3) Section 21C of the 1990 Act is repealed, but—
  - (a) the fund maintained under subsection (1) of that section immediately before its repeal by this subsection continues to be vested in the Council, and
  - (b) the Council is to apply that fund to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).

## **129 Contributions to the Fund**

- (1) In Schedule 3 (the Scottish Solicitors Guarantee Fund) to the 1980 Act, in paragraph 1—
  - (a) in sub-paragraph (2A)—
    - (i) the words “directors of incorporated practices” become head (a),
    - (ii) after “directors” (in that head), insert “ or members ”,
    - (iii) after that head (as so numbered) insert “, or



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- (b) investors in licensed legal services providers.”,
  - (b) in sub-paragraph (2B)—
    - (i) the words from “by every” to the end become head (a),
    - (ii) in that head (as so numbered), for “scale of such” substitute “relevant scale of annual corporate ”,
    - (iii) after that head (as so numbered) insert “, and
      - (b) by every licensed provider, in respect of each year during which or part of which it operates as such under the licence issued by its approved regulator, a contribution (also an “annual corporate contribution”) in accordance with the relevant scale of annual corporate contributions referred to in sub-paragraph (3).”,
  - (c) in sub-paragraph (3)—
    - (i) for “scale” in the first place where it occurs substitute “ scales ”,
    - (ii) the words from “, which scale” to the end are repealed,
  - (d) after sub-paragraph (3) insert—

“(3A) The scales of annual corporate contributions—

    - (a) are to be fixed under sub-paragraph (3) by reference to all relevant factors, including—
      - (i) in the case of incorporated practices, the number of solicitors that they have as directors, members or employees,
      - (ii) in the case of licensed providers, the number of solicitors that they have as investors or employees,
    - (b) may otherwise make different provision as between incorporated practices and licensed providers.”,
  - (e) in sub-paragraph (4), after “incorporated practice” insert “ or a licensed provider ”,
  - (f) in sub-paragraph (5), after “incorporated practice” insert “ and licensed provider ”,
  - (g) in sub-paragraph (8), after “incorporated practice” insert “ or a licensed provider ”.
- (2) In Schedule 3 to the 1980 Act, after paragraph 1B insert—
- “1C (1) Paragraph 1 applies to a conveyancing or executry practitioner as it applies to a solicitor.
- (2) But it does so with the following of its provisions to be disregarded—
- (a) the reference in sub-paragraph (1) to an application for a practising certificate,
  - (b) sub-paragraphs (2), (2A), (6) and (9).
- (3) If a conveyancing or executry practitioner fails to pay an annual contribution due by virtue of this paragraph, the Council may suspend (pending payment) the relevant entry in the register maintained by them under section 17(1) or 18(1) of the 1990 Act.
- ”

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(4) For the purposes of section 43 and this paragraph, the references to a conveyancing or executry practitioner (or conveyancing or executry services) are to be construed in accordance with section 23 of the 1990 Act.”.

(3) In Schedule 3 to the 1980 Act, in paragraph 3(2)—

- (a) for “and incorporated practices” substitute “ , incorporated practices and licensed providers ”,
- (b) for “or incorporated practice or practices” substitute “ , incorporated practice or practices or licensed provider or providers ”.

### **130 Cap on individual claims**

In Schedule 3 to the 1980 Act—

(a) in paragraph 4, after sub-paragraph (3) insert—

“(3A) The amount of an individual grant from the Guarantee Fund may not exceed £1.25 million.”,

(b) after paragraph 4 insert—

“5

- (1) The Scottish Ministers may by regulations amend the sum specified in paragraph 4(3A).
- (2) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).
- (3) The power to make regulations under sub-paragraph (1) is exercisable by statutory instrument; but a statutory instrument containing any such regulations is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

*The Law Society*

### **131 Acting as approved regulator**

After section 1 of the 1980 Act insert—

#### **“1A Power to act as statutory regulator**

The Society may—

- (a) act as an approved regulator within the meaning of Part 2 of the 2010 Act,
- (b) do anything that is necessary or expedient for the purposes of doing so.”.

**Status:** Point in time view as at 10/11/2010. This version of this Act contains provisions that are not valid for this point in time.  
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VALID FROM 30/06/2011

### 132 Council membership

- (1) In section 3 (establishment and functions of Council of Law Society) of the 1980 Act, in subsection (1), after “elected” insert “, co-opted or appointed”.
- (2) In Schedule 1 to the 1980 Act—
  - (a) in paragraph 2 (the Council's scheme)—
    - (i) in head (a), the word “, election,” is repealed,
    - (ii) after head (a) insert—

“(aa) election, co-option and appointment to the Council;”
  - (b) in paragraph 3 (detail of the scheme), after head (b) insert—

“(bza) shall make provision for—

    - (i) the election or co-option of solicitor members to the Council,
    - (ii) the appointment of non-solicitor members to the Council;”
  - (c) after paragraph 3 insert—

“3A

    - (1) This paragraph applies for the purpose of paragraph 3(bza).
    - (2) Persons are electable, or eligible to be co-opted, as solicitor members if they are members of the Society.
    - (3) Persons are appointable as non-solicitor members if they appear to the Council—
      - (a) to be qualified to represent the interests of the public in relation to the provision of legal services in Scotland, or
      - (b) having regard to the Society's functions, to be suitable in other respects.”

### 133 Regulatory committee

- (1) In section 3A (discharge of functions of Council of the Law Society) of the 1980 Act, in subsection (11), for “is” substitute “is—
  - (a) subject to sections 3B to 3G, and
  - (b)”.
- (2) After section 3A of the 1980 Act insert—

#### “3B Regulatory committee

- (1) The Council must, for the purpose mentioned in subsection (2)—
  - (a) arrange under section 3A(1)(a) for their regulatory functions to be exercised on their behalf by a regulatory committee, and

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- (b) ensure that the committee continues so to exercise those functions (in particular, for the discharge of the Council's responsibility as mentioned in section 3A(9)(a)).
- (2) The purpose is of ensuring that the Council's regulatory functions are exercised—
  - (a) independently of any other person or interest,
  - (b) properly in other respects (in particular, with a view to achieving public confidence).
- (3) Accordingly, the Council must not—
  - (a) exercise their regulatory functions through any other means, or
  - (b) interfere unduly in the regulatory committee's business.
- (4) Subsection (3)(a) is subject to—
  - (a) any determination made by the regulatory committee in a particular case that it is necessary, for ensuring that something falling within the Council's regulatory functions is achieved appropriately, that specific action be taken otherwise than through the regulatory committee, and
  - (b) such directions as the regulatory committee gives the Council (acting in any other capacity) in connection with the determination.

### **3C Particular rules applying**

- (1) The following particular rules apply as respects the regulatory committee—
  - (a) the committee's membership may include persons who are not members of the Council,
  - (b) at least 50% of the committee's membership is to comprise lay persons,
  - (c) lay persons, where they are not members of the Council, are appointable to the committee if they would be appointable to the Council as non-solicitor members (see paragraph 3A(3) of Schedule 1),
  - (d) the committee is to appoint one of its lay members as its convener,
  - (e) if the convener is not present at a meeting of the committee, another of its lay members is to chair the meeting.
- (2) Any sub-committee of the regulatory committee (formed under section 3A(2)(a)) is subject to the particular rules applying as respects the regulatory committee, except that—
  - (a) a meeting of the sub-committee need not be chaired by one of its lay members,
  - (b) it may co-opt members from outside the membership of the regulatory committee.
- (3) Nothing done by the regulatory committee (or a sub-committee of it) is invalid solely because of a temporary shortfall in the number of its lay members.
- (4) In subsection (1)(b), “lay persons” are persons who are not—
  - (a) solicitors,

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- (b) advocates,
- (c) conveyancing or executry practitioners as defined in section 23 of the 1990 Act,
- (d) those having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act, or
- (e) confirmation agents or will writers within the meaning of Part 3 of the 2010 Act.

### **3D Resolving regulatory disputes**

- (1) This section applies in relation to any dispute arising between the regulatory committee and the Council (acting in any other capacity) with respect to the application of section 3B.
- (2) If the dispute cannot be settled by the parties, it is to be submitted to (and resolved by) arbitration.
- (3) The arbitrator is to be appointed—
  - (a) jointly by the parties, or
  - (b) in the absence of agreement for joint appointment, by the Lord President on a request made by either (or both) of them.
- (4) The arbitrator's resolution of the dispute is final and binding on the parties.

### **3E Further provision for section 3B etc.**

- (1) The Scottish Ministers may by regulations—
  - (a) prescribe a maximum—
    - (i) number of members that the regulatory committee, or any sub-committee of it, may have,
    - (ii) proportion of the membership (of either) that may comprise co-opted members,
  - (b) make further provision about the Council's regulatory functions if they believe that such provision is necessary for ensuring that those functions are exercised in accordance with the purpose stated in section 3B(2),
  - (c) modify (by elaboration or exception) the definition in sections 3F and 3G if they believe that such modification is appropriate.
- (2) Before making regulations under subsection (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).
- (3) The power to make regulations under subsection (1) is exercisable by statutory instrument; but—
  - (a) a statutory instrument containing regulations under subsection (1)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament,
  - (b) a statutory instrument containing regulations under subsection (1) (b) or (c) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

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### **3F Meaning of “regulatory functions”**

- (1) For the purposes of sections 3B to 3E, the Council's “regulatory functions” are their functions of regulating in respect of any matter the professional practice, conduct and discipline of—
- (a) solicitors (including firms of solicitors) and incorporated practices,
  - (b) other legal practitioners, for example—
    - (i) registered European or foreign lawyers,
    - (ii) conveyancing or executry practitioners.
- (2) Those functions include (in particular) their functions as to—
- (a) setting standards of qualification, education and training,
  - (b) admission of persons to the profession,
  - (c) keeping the roll and other registers,
  - (d) administering the Guarantee Fund,
  - (e) making regulatory rules under any relevant enactment.
- (3) In subsection (1)(b)(ii), the reference to conveyancing or executry practitioners is to be construed in accordance with section 23 of the 1990 Act.

### **3G Extended meaning under section 3F**

If the Society acts as an approved regulator as mentioned in section 1A, the Council's “regulatory functions” for the purposes of sections 3B to 3E also comprise such regulatory functions as—

- (a) fall within the meaning of that expression as given for the purposes of Part 2 of the 2010 Act (by section 30(1) of that Act), and
- (b) are exercisable under that Part of that Act by the Society in its capacity as an approved regulator as so mentioned.”.

- (3) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—

““regulatory committee” means the regulatory committee formed in accordance with section 3B(1);”.

VALID FROM 01/05/2011

#### *The 1980 Act: further modification*

### **134 Keeping the solicitors roll etc.**

- (1) In section 7 (keeping the roll) of the 1980 Act, after subsection (2) insert—
- “(2A) The roll is also to record against the name of each enrolled solicitor the address of the place of business of that solicitor (as given under subsection (2) of that section).”.
- (2) In section 12A (keeping the register) of the 1980 Act, after subsection (2) insert—

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“(2A) The register is also to record against the name of each lawyer entered on it the address of the place of business of that lawyer and related information (as given under section 12B(1)).”.

### 135 Removal from the roll etc.

- (1) In section 9 (removal of name from roll on request) of the 1980 Act—
- (a) the existing text becomes subsection (1),
  - (b) in subsection (1) (as so numbered), the words from “on” to “hand,” are repealed,
  - (c) after subsection (1) (as so numbered) insert—
    - “(2) But the Council are required to remove the name or annotation only if they are satisfied that—
    - (a) the solicitor has made adequate arrangements with respect to the business which the solicitor then has in hand, and
    - (b) it is otherwise appropriate to do so.”.
- (2) In section 12C (removal of name from register on request) of the 1980 Act—
- (a) the existing text becomes subsection (1),
  - (b) in subsection (1) (as so numbered), the words from “, on” to “hand,” are repealed,
  - (c) after subsection (1) (as so numbered) insert—
    - “(2) But the Council are required to remove the name or annotation only if they are satisfied that—
    - (a) the solicitor has made adequate arrangements with respect to the business which the solicitor then has in hand, and
    - (b) it is otherwise appropriate to do so.”.

### 136 Restoration to the roll

- (1) In section 10 (restoration of name to roll on request) of the 1980 Act—
- (a) after subsection (1) insert—
    - “(1ZA) Where the restoration of a solicitor's name to the roll has been prohibited under section 53(2)(aa), the solicitor is entitled to have the solicitor's name restored to the roll if (but only if) the Tribunal so orders—
    - (a) on an application made to it by the solicitor, and
    - (b) after such enquiry as it thinks proper.”,
  - (b) in subsection (1A), after “section 9” insert “ (except where subsection (1ZA) applies) ”,
  - (c) in subsection (2), after “subsection (1)” insert “ or (1ZA) ”.
- (2) In section 53 (powers of Tribunal) of the 1980 Act, in subsection (2)—
- (a) after paragraph (a) insert—
    - “(aa) if the solicitor's name has been removed from the roll under section 9, by order prohibit the restoration of the solicitor's name to the roll;”,

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- (b) the word “or” where it occurs immediately after any of paragraphs (a) to (e) is repealed.

### **137 Suspension from practice**

- (1) In section 18 (suspension of practising certificates) of the 1980 Act—

- (a) after subsection (1) insert—

“(1ZA) The Council may suspend from practice a solicitor who—

- (a) has been convicted of an offence involving dishonesty, or  
 (b) in respect of an offence, has been—  
     (i) fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction), or  
     (ii) sentenced to imprisonment for a term of 12 months or more.”,

- (b) in subsection (2), after “subsection (1)” insert “ or (1ZA) ”.

- (2) In section 19 (further provisions relating to suspension of practising certificates) of the 1980 Act—

- (a) after subsection (5A) insert—

“(5B) A suspension from practice arising by virtue of section 18(1ZA) expires if the grounds for it no longer apply.

(5C) On the occurrence of any of the circumstances mentioned in subsections (4) to (5B), the solicitor concerned must notify the Council in writing (and without delay).”,

- (b) in subsection (6), after “section 18(1)” insert “ or by virtue of section 18(1ZA) ”.

- (3) In section 24F (suspension of registration certificate) of the 1980 Act—

- (a) after subsection (1) insert—

“(1A) The Council may suspend from practice a registered European lawyer who—

- (a) has been convicted of an offence involving dishonesty, or  
 (b) in respect of an offence, has been—  
     (i) fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction), or  
     (ii) sentenced to imprisonment for a term of 12 months or more.”,

- (b) in subsection (2), after “subsection (1)” insert “ or (1A) ”.

- (4) In section 24G (further provisions relating to suspension of registration certificate) of the 1980 Act—

- (a) after subsection (4) insert—

“(4A) A suspension from practice arising by virtue of section 24F(1A) expires if the grounds for it no longer apply.



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- (4B) On the occurrence of any of the circumstances mentioned in subsections (2) to (4A), the lawyer concerned must notify the Council in writing (and without delay).”,
- (b) in subsection (5), after “section 24F(1)” insert “ or by virtue of section 24F(1A) ”.

### 138 Accounts rules fee

- (1) After section 37 of the 1980 Act insert—

#### “37A Accounts fee

- (1) An annual fee set in accordance with this section (the “accounts fee”) is to be paid by each—
- (a) solicitor who is required by paragraph 1 of Schedule 3 (as read with section 43(7)) to pay an annual contribution on behalf of the Guarantee Fund,
  - (b) incorporated practice that is required by that paragraph of that Schedule to pay an annual corporate contribution on that behalf.
- (2) The accounts fee is also to be paid by each—
- (a) registered European lawyer or registered foreign lawyer who is required by virtue of paragraph 1A or 1B of that Schedule to pay an annual contribution on that behalf,
  - (b) multi-national practice to which the accounts rules apply by virtue of an enactment.
- (3) The accounts fee is to be set by the Council for the purpose of funding the exercise of their function of securing compliance (by the categories specified in subsections (1) and (2)) with the accounts rules.
- (4) The accounts fee is to be—
- (a) set—
    - (i) no later than 30 September each year in respect of the 12 month period beginning with 1 November that year, or
    - (ii) by reference to such other dates as the Council may fix,
  - (b) paid to the Council by such date as they may fix.
- (5) The accounts fee may be set—
- (a) so as to involve different amounts (including nil) for different—
    - (i) categories (as specified in subsections (1) and (2)),
    - (ii) circumstances (by reference to all relevant factors),
  - (b) in the case of incorporated practices, by particular reference to the number of solicitors that they have as directors, members or employees.
- (6) The Council may take such steps as they consider necessary for recovering the accounts fee due in accordance with this section.”
- (2) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—
- ““accounts fee” has the meaning given by section 37A(1);”.

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**Changes to legislation:** There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010. (See end of Document for details)

### 139 Powers of Tribunal

- (1) In section 53 (powers of Tribunal) of the 1980 Act—
- (a) in subsection (1)(b), for “sentenced to a term of imprisonment of not less than 2 years” substitute “ fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more ”,
  - (b) in subsection (2), after paragraph (bb) insert—
    - “(bc) where—
      - (i) an incorporated practice has been convicted, or has been found to have failed, as referred to in subsection (1)(c) or (d), and
      - (ii) the Tribunal consider that the complainer has been directly affected by any misconduct by the practice to which the conviction or failure is (to any extent) attributable,
 direct the practice to pay to the complainer compensation (for loss, inconvenience or distress resulting from the misconduct) of such amount not exceeding £5,000 as the Tribunal may specify;”,
  - (c) in subsection (3A), for “subsection (2)(c), (d) and (e)” substitute “ subsection (2)(bb) to (e) ”,
  - (d) in subsection (7C), after “paragraph (bb)” insert “ or (bc) ”,
  - (e) in subsection (9), after “subsection (2)(bb)” insert “ and (bc) ”.
- (2) In section 54 (appeals from decisions of Tribunal) of the 1980 Act, in subsections (1C), (1D) and (1E), after “section 53(2)(bb)” in each place where it occurs insert “ or (bc) ”.

## CHAPTER 4

### OTHER BODIES

#### *Scottish Legal Aid Board*

VALID FROM 01/05/2011

### 140 Exclusion from giving legal assistance

In section 31 (solicitors and counsel) of the 1986 Act—

- (a) in subsections (3), (4) and (5), for “relevant body” wherever appearing substitute “ Board ”,
- (b) subsections (6) and (10) are repealed.

### 141 Availability of legal services

In the 1986 Act—

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- (a) in section 1 (the Scottish Legal Aid Board), after subsection (2) insert—
  - “(2A) The Board also has the general function of monitoring the availability and accessibility of legal services in Scotland (including by reference to any relevant factor relating particularly to rural or urban areas).”
- (b) in section 2 (powers of the Board), after subsection (2)(d) insert—
  - “(da) to give the Scottish Ministers such advice as it may consider appropriate in relation to the availability and accessibility of legal services in Scotland;”
- (c) in section 3 (duties of the Board), after subsection (2) insert—
  - “(2A) The Board is, from time to time, to give the Scottish Ministers such information as they may require relating to the availability and accessibility of legal services in Scotland.”

## 142 Information about legal services

After section 35A of the 1986 Act insert—

### “35AA Information about legal services

- (1) For the purpose mentioned in subsection (4)(a), each of the bodies mentioned in subsection (3)(a), (b) and (c) must provide the Board with such information as the Board may reasonably require.
- (2) For the purpose mentioned in subsection (4)(b)—
  - (a) each of the bodies mentioned in subsection (3)(a) and (b) must—
    - (i) inform the Board whenever it upholds a conduct complaint about a solicitor or (as the case may be) an advocate, and
    - (ii) give the Board a summary of the relevant facts,
  - (b) the body mentioned in subsection (3)(d) must—
    - (i) inform the Board whenever it upholds a services complaint about a solicitor or an advocate, and
    - (ii) give the Board a summary of the relevant facts.
- (3) The bodies are—
  - (a) the Law Society,
  - (b) the Faculty of Advocates,
  - (c) the Scottish Court Service,
  - (d) the Scottish Legal Complaints Commission.
- (4) The purposes are the Board's exercise of its functions under—
  - (a) section 1(2A),
  - (b) section 31(3).
- (5) In subsection (2), a reference to a services or a conduct complaint is to be construed in accordance with Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007.”

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### Scottish Legal Complaints Commission

#### 143 Relevant practitioners

In section 46(1) (interpretation of Part 1) of the 2007 Act—

- (a) in the definition of “inadequate professional services”, after paragraph (a) (v) insert—

“(vi) a registered European or foreign lawyer, professional services that are in any respect not of the quality which could reasonably be expected of a competent lawyer of that type;”,

- (b) in the definition of “practitioner”, after paragraph (g) insert—

“(h) a registered European or foreign lawyer, whether or not registered at that time and notwithstanding that subsequent to that time the lawyer's registration has ceased to have effect or the lawyer has stopped practising;”,

- (c) after the definition of “practitioner” insert—

““registered European or foreign lawyer” is to be construed in accordance with section 65(1) of the 1980 Act;”,

- (d) in the definition of “relevant professional organisation”, after paragraph (d) insert—

“(e) a registered European or foreign lawyer, the Council;”,

- (e) in the definition of “unsatisfactory professional conduct”, after paragraph (d) insert—

“(e) a registered European or foreign lawyer, conduct that is not of the standard which could reasonably be expected of a competent and reputable lawyer of that type;”.

#### 144 Minor amendments

In the 2007 Act—

- (a) in section 29—

(i) in subsection (4), after “members” insert “, and the Scottish Ministers, ”,

(ii) in subsection (9), for “subsection (1)” substitute “ subsection (8) ”,

- (b) in section 46(1), in paragraph (c) in the definition of “unsatisfactory professional conduct”, for “section 27 of this Act” substitute “ section 27 of the 1990 Act ”,

- (c) in paragraph 13(2)(a) of schedule 1—

(i) for “the function of deciding” substitute “ a decision ”,

(ii) for “whether” substitute “ that ”,

(iii) for “exercised” substitute “ taken ”,

- (d) in paragraph 1(h)(iii) of schedule 3 for “whether” substitute “ that ”.

#### 145 The 2007 Act: further provision

- (1) In section 78 (ancillary provision) of the 2007 Act, after subsection (1) insert—

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“(1A) The Scottish Ministers may make such further provision as, having regard to the effect of the Legal Services Act 2007 so far as concerning the subject matter of Parts 1 and 2 of this Act (and applying in Scotland), they consider necessary or expedient in connection with this Act or any related provisions of the 1980 Act.”.

(2) In section 79 (regulations or orders) of the 2007 Act, in subsection (3)(c)(i), after “section 78(1)” insert “ or (1A) ”.

## PART 5

### GENERAL

#### 146 Regulations

(1) Any power of the Scottish Ministers to make regulations under the preceding Parts of this Act is exercisable by statutory instrument.

(2) The regulations may—

- (a) make different provision for different purposes,
- (b) include such incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of or in connection with the regulations.

(3) But—

- (a) a statutory instrument containing regulations under—
  - (i) section 6(6),
  - (ii) section 12(2)(c) or (5),
  - (iii) section 38(7),
  - (iv) section 44(1),
  - (v) section 45(1),
  - (vi) section 48(6)(a)(i),
  - (vii) section 49(4),
  - (viii) section 67(3),
  - (ix) section 70(10),
  - (x) section 93(2)(f),
  - (xi) section 100(5)(b),
  - (xii) section 104(2)(f),
  - (xiii) section 111(5)(b), or
  - (xiv) section 112(1),

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament,

- (b) a statutory instrument containing any other regulations under the preceding Parts of this Act is subject to annulment in pursuance of a resolution of the Parliament.

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#### 147 Further modification

- (1) The Scottish Ministers may by regulations made by statutory instrument—
  - (a) amend the percentage specified in subsection (1) of section 49, or
  - (b) repeal section 49 (and consequentially the references in this Act to that section).
- (2) But regulations may be made under subsection (1) only if the Scottish Ministers believe that the effect of the amendment or (as the case may be) repeal would be—
  - (a) compatible with the regulatory objectives, and
  - (b) appropriate in any other relevant respect.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) the Lord President,
  - (b) the Law Society,
  - (c) every approved regulator,
  - (d) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
  - (e) such other person or body as they consider appropriate.
- (4) A statutory instrument containing regulations under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

#### 148 Ancillary provision

- (1) The Scottish Ministers may by regulations made by statutory instrument make such—
  - (a) supplemental provision, or
  - (b) incidental, consequential, transitional, transitory or saving provision,
 as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) But—
  - (a) a statutory instrument containing regulations under subsection (1) which adds to, replaces or omits any part of the text of an Act (including this Act) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament,
  - (b) a statutory instrument containing any other regulations under that subsection is subject to annulment in pursuance of a resolution of the Parliament.

#### 149 Definitions

- (1) In this Act (unless the context otherwise requires)—
  - “the 1980 Act” means the Solicitors (Scotland) Act 1980,
  - “the 1986 Act” means the Legal Aid (Scotland) Act 1986,
  - “the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
  - “the 2007 Act” means the Legal Profession and Legal Aid (Scotland) Act 2007,
  - “Faculty” means Faculty of Advocates,
  - “Law Society” means Law Society of Scotland,
  - “Lord President” means Lord President of the Court of Session,

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“OFT” means Office of Fair Trading.

- (2) In this Act (unless the context otherwise requires)—
- (a) the following expressions are to be construed in accordance with section 65(1) (interpretation) of the 1980 Act—
    - “advocate”,
    - “incorporated practice”,
    - “practising certificate”,
    - “registered European lawyer”,
    - “registered foreign lawyer”,
    - “solicitor”,
  - (b) the following expressions are to be construed in accordance with section 23 (interpretation) of the 1990 Act—
    - “conveyancing practitioner”,
    - “executry practitioner”,
  - (c) a reference to a litigation practitioner is to a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act.
- (3) In this Act (unless the context otherwise requires), a reference to a professional association or body includes—
- (a) the Law Society,
  - (b) any other organisation which serves a profession (for example, the Institute of Chartered Accountants of Scotland).
- (4) Schedule 9 is an index of expressions introduced for—
- (a) the whole Act,
  - (b) Parts 2 and 3.

## **150 Commencement and short title**

- (1) This section and sections 146 to 149 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on the day that the Scottish Ministers by order made by statutory instrument appoint.
- (3) An order under subsection (2) may appoint different days for different provisions.
- (4) An order under subsection (2) may—
- (a) make different provision for different purposes,
  - (b) include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act.
- (5) The short title of this Act is the Legal Services (Scotland) Act 2010.

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VALID FROM 01/04/2011

**SCHEDULE 1**  
*(introduced by section 38(3))*  
**PERFORMANCE TARGETS**

.....

VALID FROM 01/04/2011

**SCHEDULE 2**  
*(introduced by section 38(3))*  
**DIRECTIONS**

.....

VALID FROM 01/04/2011

**SCHEDULE 3**  
*(introduced by section 38(3))*  
**CENSURE**

.....

VALID FROM 01/04/2011

**SCHEDULE 4**  
*(introduced by section 38(3))*  
**FINANCIAL PENALTIES**

.....



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**Changes to legislation:** There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010. (See end of Document for details)

VALID FROM 01/04/2011

**SCHEDULE 5**

*(introduced by section 38(3))*

**AMENDMENT OF AUTHORISATION**

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VALID FROM 01/04/2011

**SCHEDULE 6**

*(introduced by section 38(3))*

**RESCISSION OF AUTHORISATION**

.....

VALID FROM 02/07/2012

**SCHEDULE 7**

*(introduced by section 39(2))*

**SURRENDER OF AUTHORISATION**

.....

VALID FROM 01/04/2011

**SCHEDULE 8**

*(introduced by section 67(1))*

**INVESTORS IN LICENSED PROVIDERS**

.....

**SCHEDULE 9**

*(introduced by section 149(4))*

**INDEX OF EXPRESSIONS USED**

*Whole Act expressions*

*Relevant provisions*

*Status:* Point in time view as at 10/11/2010. This version of this Act contains provisions that are not valid for this point in time.

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particular expressions	all in Part 1
regulatory objectives	
professional principles	
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	
registered European lawyer	
registered foreign lawyer	
solicitor	

<b><i>Part 2 expressions</i></b>	<b><i>Relevant provisions</i></b>
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

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regulatory scheme (of approved regulator)      section 12

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<b><i>Part 3 expressions</i></b>	<b><i>Relevant provisions</i></b>
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

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