

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 1 – Approved Regulators

Practice rules

Section 18 – Practice rules: general

Section 19 – Financial sanctions

Section 20 – Enforcement of duties

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

Section 21 – Performance report

48. This section provides that the practice rules on reviewing and reporting on the performance of licensed providers must require the Head of Practice (or Practice Committee) of a licensed provider to carry out an annual review and send a report to its approved regulator. The section also sets out certain matters that must be examined in the review.

Section 22 – Accounting and auditing

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

Section 23 – Professional indemnity

50. Under this section, practice rules must require licensed providers to have certain professional indemnity arrangements and must include equivalent provision to that on

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

professional indemnity in section 44 of the 1980 Act in relation to an incorporated practice.

51. Section 44 of the 1980 Act provides for the Council of the Society (“the Council”) to make rules concerning indemnity for solicitors and incorporated practices against any class of professional liability (for example, for negligence in the delivery of a legal service). The rules may provide for a fund held by the Society, or for insurance with an authorised insurer held by the Society, or require solicitors to take out insurance. Currently, the Society’s rules provide that all solicitors acting as principals in private practice must be insured under a single “master policy” held by the Society (Solicitors (Scotland) Professional Indemnity Insurance Rules 2005).