

# LEGAL SERVICES (SCOTLAND) ACT 2010

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Regulation of Licensed Legal Services**

##### *Chapter 1 – Approved Regulators*

#### **Regulatory functions etc.**

##### *Section 30 – Regulatory and representative functions*

60. **Section 30** defines the regulatory and representative functions of an approved regulator under the Act.
61. Subsection (3) makes clear that the Scottish Ministers are not authorised to exercise any of their functions under the Act in relation to an approved regulator’s representative functions.

##### *Section 31 – Assessment of licensed providers*

62. **Section 31** provides that each approved regulator (or person who or body that has been delegated this function) is required to carry out periodic reviews of the performance of licensed providers at least once in every 3-year period. The 3-year period starts with the date that the particular licensed provider was issued the licence (subsection (1)). This is an external assessment which complements the annual self-assessment carried out under section 21. The assessment must consider how well the licensed provider has had regard to the regulatory objectives, adhered to the professional principles, complied with the approved regulator’s regulatory scheme and the licence conditions, and any such matters as the approved regulator considers appropriate (subsection (3)).
63. Subsection (2) provides that the Scottish Ministers may require an approved regulator to assess a licensed provider at other times if requested to do so by the SLCC. The SLCC may only make the request if it has significant concerns over the handling of a complaint by a licensed provider.
64. The approved regulator is required to inform the relevant professional association if the assessment of the licensed provider in question reveals professional misconduct (or potential professional misconduct) by any of its members (subsection (7)). For example, if there were indications of misconduct by a solicitor or a chartered accountant employed by the licensed provider, the approved regulator would have to notify the Society or the Institute of Chartered Accountants of Scotland respectively. This could happen whether or not the person in question is involved in the provision of legal services within the licensed provider.
65. Under subsection (9), the Scottish Ministers can make further provisions about the assessment of licensed providers by regulations. This could be used to deal with any unforeseen circumstances, or to elaborate on the assessment procedure and requirements should this be necessary.