

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 1 – Approved Regulators

Relationship with other bodies

Section 32 – Giving information to SLAB

66. The Board has been given the additional duty of monitoring the availability and accessibility of legal services in Scotland, inserted into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) as section 1(2A) by section 141 of the Act. This section provides that an approved regulator must provide the Board with information in relation to this function.

Section 33 – Reporting to Law Society

67. [Section 33](#) requires an approved regulator (but not the Society, should it be one) whose licensed providers make contributions to the Guarantee Fund under the approved regulator’s compensation rules to report to the Society:
- any breach by a licensed provider of the practice rules on accounting and auditing;
or
 - any suspicion of financial impropriety which, in the opinion of the approved regulator, may result in the risk of a claim being made on the Guarantee Fund.
68. The approved regulator must make available to the Society any report of an inspection which it has carried out in relation to those practice rules or any other financial procedures regulated by the approved regulator. The approved regulator must also inform the Society of any further action it intends to take (or has taken) in relation to such breaches, suspicions or inspections.

Section 34 – Steps open to Society

69. [Section 34](#) makes provision for the situation where the Society suspects that the approved regulator of a licensed provider making contributions to the Guarantee Fund is failing in its enforcement role in relation to the financial procedures of the licensed provider. In those circumstances, the Society must first make representations to the approved regulator in question. If it is not satisfied with the response (or none has been received within a reasonable time), the Society may refer the matter to the Scottish Ministers. In such a referral, the Society may request that the Scottish Ministers take such action as they consider appropriate.
70. The Society may also seek the consent of the Scottish Ministers to inspect a licensed provider’s documents, records, and other information at its premises which relate to the

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

licensed provider's client account or any other financial account held by it. The Society may only seek the consent if it suspects that the approved regulator's failure is risking a claim being made on the Guarantee Fund. The Scottish Ministers may only give their consent where they are satisfied that the Society's suspicions are reasonable and that the inspection is necessary.

Section 35 – Financial inspection by Society

71. **Section 35** sets out certain requirements relating to the inspections which the Society may carry out under section 34. In particular, before carrying out an inspection the Society must consult the approved regulator and give at least 48 hours notice to the licensed provider in question. Following the inspection, the Society must report its findings to the Scottish Ministers and the approved regulator. In such a report, the Society can request that the Scottish Ministers take such action as they consider appropriate. Finally, the licensed provider must co-operate with the Society in relation to any inspection.