

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 1 – Approved Regulators

Performance and measures

Section 36 – Review of own performance

72. **Section 36** requires an approved regulator to review its own performance annually and provides for the matters to be covered by the review. A report on the review must be submitted to the Scottish Ministers, who must lay a copy before the Scottish Parliament. It also allows the Scottish Ministers to make further provision by regulations relating to both the review and the report.

Section 37 – Monitoring by Ministers

73. This section gives the Scottish Ministers a power to monitor performance of approved regulators. It sets out matters which may be included in the monitoring (section 37(2)) and requires an approved regulator to provide information in relation to its regulatory scheme to the Scottish Ministers (section 37(3)).

Section 38 – Measures open to Ministers

74. **Section 38** describes the options open to the Scottish Ministers should they feel that an approved regulator is not performing its functions adequately. Subsection (4) sets out the measures which can be taken, which include the rescission of a regulator's authorisation to regulate. The measures in (4)(a), (b), (c), (e) and (f) can only be taken by the Scottish Ministers if they have the agreement of the Lord President.
75. More detail as to when these measures will apply and on the procedures relating to these measures can be found in schedules 1 to 6 to this Act.
76. The Scottish Ministers, with the agreement of the Lord President, have the power under subsection (7) to make further provision by regulations regarding the measures that may be taken in relation to approved regulators. This could be used to give further detail around the specifics of the measures, and the procedure involved. This subsection also gives the Scottish Ministers the power to specify, by regulations, additional measures which can be taken should this be considered necessary. Before making regulations under subsection (6), the Scottish Ministers must consult every approved regulator.

Schedule 1 – Performance targets

77. This schedule gives details and the procedures to be followed when the Scottish Ministers set performance targets for approved regulators and also provides a procedure for representations to the Scottish Ministers by the approved regulator.

Schedule 2 – Directions

78. This schedule gives details about the procedures to be followed (including consultation and representations) when the Scottish Ministers exercise their power to give directions to an approved regulator.

Schedule 3 – Censure

79. This schedule gives further details about the procedures to be followed when the Scottish Ministers, with the consent of the Lord President, use their power to censure an approved regulator for any act or omission (including the procedures for representations).

Schedule 4 – Financial penalties

80. This schedule gives further details about the procedures to be followed when the Scottish Ministers use their power to impose a financial penalty on an approved regulator (including the procedures for representations, amounts of financial penalties, appeals, and interest).

Schedule 5 – Amendment of authorisation

81. This schedule gives further details about the procedures to be followed when the Scottish Ministers amend the authorisation of an approved regulator (including the procedures for representations).

Schedule 6 – Rescission of authorisation

82. This schedule gives further details about the procedures to be followed when the Scottish Ministers use their power to rescind an approved regulator's authorisation (including the procedures for representations).