

# LEGAL SERVICES (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

#### **Chapter 2 – Licensed Legal Services Providers**

#### **Discontinuance of services**

##### ***Section 68 – Duty to warn***

150. **Section 68** requires that the licensed provider gives as much warning as possible to the approved regulator where it is in serious financial difficulty or in the case that it is likely to or intends to stop providing legal services (except in the cases of revocation or suspension, when the approved regulator would already be aware). The licensed provider must also take steps to prevent disruption to clients.

##### ***Section 69 – Inability to operate***

151. This section covers certain situations (as described in subsection (1)) where the approved regulator must revoke a licensed provider's licence, unless the approved regulator is satisfied that the conditions described in subsection (3) are met. These are situations where the licensed provider does not meet the eligibility criteria in sections 48 or 49, or the business is in the process of being wound up, or does not have someone who can be a Head of Legal Services or Head of Practice, or for some other reason a licensed provider stops providing legal services. In such circumstances, the licensed provider must notify its approved regulator without delay, and within 7 days.
152. Unless the situation is temporary and there are sufficient arrangements in place to safeguard the interests of clients, a licence will be revoked. In temporary situations, the approved regulator can allow the licensed provider to continue to operate or suspend its licence as it considers appropriate. The situation must be reviewed every 14 days (or more frequently) to ensure that a decision on whether or not to revoke the licensed provider's licence is made promptly to minimise the period of uncertainty for the licensed provider's clients.

##### ***Section 70 – Safeguarding clients***

153. **Section 70** makes provision to safeguard the interests of clients of a licensed provider which is ceasing, or has already ceased (see subsection (11)) to provide legal services. It sets out the requirements placed on the licensed provider in question, and allows the approved regulator to issue directions (subsection (3)) to it in order to protect the interests of clients. Such directions may concern making certain documents and information, or money held on behalf of clients or in trust, available. For example, where the licensed provider has ceased to exist, clients may find it difficult or time consuming to gain access to documents, information, or money, not least if the former point of contact is no longer available. The approved regulator's ability to compel the

licensed provider (or former licensed provider) to take such actions as it considers necessary could be used therefore to mitigate the impact on clients.

154. Subsection (6) allows recourse to the Court of Session should the licensed provider fail to comply with any directions given by the approved regulator. The Court may make various orders to preserve the clients' positions, such as varying the approved regulator's directions as it sees fit, or impose conditions, or freezing bank accounts. The Court, following consideration of the circumstances must be satisfied that the action is appropriate and must consider any relevant input from those with an interest in the situation before making an order (see subsection (7)).
155. Subsection (10) gives the Scottish Ministers a regulation making power to make further provision regarding the steps taken to safeguard the interests of clients in the circumstances described in subsection (1).

### ***Section 71 – Distribution of client account***

156. This section indicates that, should a licensed provider go into administration, or be wound up, or have a provisional liquidator, liquidator, receiver or judicial factor appointed, or should it pass a winding up order (unless it does so simply for the purposes of reconstruction or amalgamation with another licensed provider), any client's monies of the kind indicated in section 42 of the 1980 Act must be distributed in the way that section 42 of that Act requires. Section 42 deals with the distribution of sums in client bank account kept by a solicitor or an incorporated practice.