

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – the Legal Profession

Chapter 3 – Solicitors and Other Representatives

Guarantee Fund

Section 128 – Use of Guarantee Fund

260. This section amends section 43 of the 1980 Act to allow licensed providers to be covered by the Guarantee Fund, so that the clients of licensed providers have the same protection in the event of loss owing to fraud by a licensed provider or any person within it whilst in receipt of legal services as clients of traditional firms. This protection exists where the approved regulator has chosen not to maintain a compensation fund of its own.
261. *Section 128* also extends the cover of the Guarantee Fund to those suffering pecuniary loss through the dishonesty of a conveyancing or executry practitioner, repeals section 21C of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 requiring the Society to set up and maintain a compensation fund in respect of such practitioners and requires that that compensation fund is transferred into the Guarantee Fund.

Section 129 – Contributions to the Fund

262. This section amends Schedule 3 to the 1980 Act to require licensed providers to contribute to the Guarantee Fund on the same entity-based model as incorporated practices. The scales for incorporated practices must take into account the number of solicitors that the entity has as directors, members or employees. The scales for licensed providers must take into account the number of solicitors that the entity has as investors or employees. In addition, new paragraph 1C of Schedule 3 provides for contributions to the Guarantee Fund from conveyancing or executry practitioners.

Section 130 – Cap on individual claims

263. *Section 130* amends Schedule 3 to the 1980 Act by making provision for a cap on individual grants from the Guarantee Fund and giving the Scottish Ministers power, by regulations, to vary the cap after consultation with the Council of the Society. The cap on each grant from the Guarantee Fund is £1.25 million.