



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 2

#### REGULATION OF LICENSED LEGAL SERVICES

### CHAPTER 1

#### APPROVED REGULATORS

##### *Approved regulators*

#### **6 Approved regulators**

- (1) For the purposes of this Part, an approved regulator is a professional or other body which is approved as such by the Scottish Ministers under section 7.
- (2) That is, following an application to them by the body under subsection (3).
- (3) An application to become an approved regulator must include—
  - (a) a copy of the applicant's proposed regulatory scheme (see section 7(1)(c)),
  - (b) a copy of its proposed statement of policy under section 78(1),
  - (c) a description of—
    - (i) the applicant's constitution and composition (including internal structure),
    - (ii) its internal governance arrangements,
    - (iii) its representative functions (if any),
    - (iv) its other activities (if any).
- (4) The applicant—
  - (a) must provide the Scottish Ministers with such other information as they may reasonably require for their (or the Lord President's) consideration of its application,
  - (b) may withdraw its application at any time by giving them written notice to that effect.

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- (5) No more than 3 approved regulators may exist at any time.
- (6) The Scottish Ministers may—
  - (a) with the agreement of the Lord President, and
  - (b) after consulting such other person or body as they consider appropriate, by regulations amend the number specified in subsection (5).
- (7) The Scottish Ministers may by regulations prescribe fees that they may charge—
  - (a) an applicant to become an approved regulator,
  - (b) approved regulators.

## **7 Approval of regulators**

- (1) The Scottish Ministers may approve the applicant as an approved regulator if they are satisfied that—
  - (a) for regulating licensed legal services providers in accordance with this Part, the applicant has—
    - (i) the necessary expertise as regards the provision of legal services (including as deriving from that of the persons within it),
    - (ii) a thorough understanding of the application of the regulatory objectives and the professional principles,
    - (iii) sufficient resources (financial and otherwise),
    - (iv) the capability in other respects,
  - (b) the applicant will always exercise its regulatory functions—
    - (i) independently of any other person or interest,
    - (ii) properly in other respects (in particular, with a view to achieving public confidence),
  - (c) the applicant's proposed regulatory scheme is adequate (as determined with particular reference to section 12),
  - (d) the applicant's internal governance arrangements are, or will be, suitable (as determined with particular reference to section 27).
- (2) The Scottish Ministers may give their approval subject to conditions.
- (3) Their approval may be given—
  - (a) with restrictions imposed by reference to particular categories of—
    - (i) licensed providers,
    - (ii) legal services,
  - (b) either—
    - (i) without limit of time, or
    - (ii) for a fixed period of at least 3 years.
- (4) The Scottish Ministers may, after consulting the approved regulator, vary (including by addition or deletion) any conditions or restrictions imposed under subsection (2) or (3).
- (5) The Scottish Ministers may by regulations make further provision about approval under this section, including (in particular)—
  - (a) the process for seeking their approval,

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- (b) in relation to capability to act as an approved regulator, the criteria for their approval (including things that applicants must be able to demonstrate).
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.

## **8 Pre-approval consideration**

- (1) Before deciding whether or not to approve the applicant as an approved regulator under section 7, the Scottish Ministers must consult—
- (a) the Lord President,
  - (b) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
  - (c) such other person or body as they consider appropriate.
- (2) In consulting under subsection (1), the Scottish Ministers—
- (a) must send a copy of the application to the consultees,
  - (b) may send a copy of any revised application to any (or all) of them.
- (3) The Scottish Ministers must, with reasons, notify the applicant if they intend to—
- (a) refuse to approve it as an approved regulator, or
  - (b) impose conditions or restrictions under section 7(2) or (3).
- (4) If notification is given to the applicant under subsection (3), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
- (a) make representations to the Scottish Ministers,
  - (b) take such steps as it may consider expedient.

## **9 Lord President’s agreement**

- (1) Despite section 7(1), the Scottish Ministers must not approve the applicant as an approved regulator unless the Lord President agrees to its being approved as such.
- (2) The Scottish Ministers are to impose under section 7(2) such particular conditions relating to the expertise mentioned in section 7(1)(a)(i) as are reasonably sought by the Lord President when (and if) notifying them of the Lord President’s agreement for the purpose of subsection (1).
- (3) The Lord President’s agreement is required for—
- (a) the imposition of any—
    - (i) conditions under section 7(2) (apart from conditions to which subsection (2) relates),
    - (ii) restrictions under section 7(3),
  - (b) the variation of any such conditions or restrictions under section 7(4).

## **10 Authorisation to act**

- (1) An approved regulator may not exercise any of its regulatory functions unless it is authorised to do so by the Scottish Ministers under this section.

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- (2) The Scottish Ministers may give their authorisation if they are satisfied (or continue to be satisfied)—
  - (a) as mentioned in subsection (1) of section 7,
  - (b) as regards any criteria provided for under subsection (5)(b) of that section.
- (3) Their authorisation may be given with restrictions imposed by reference to particular categories of—
  - (a) licensed provider,
  - (b) legal services.
- (4) Their authorisation may be given—
  - (a) either—
    - (i) without limit of time, or
    - (ii) for a fixed period of at least 3 years,
  - (b) subject to conditions.
- (5) The Scottish Ministers may, after consulting the approved regulator, vary (including by addition or deletion) any restrictions or conditions imposed under subsection (3) or (4)(b).
- (6) The Scottish Ministers may by regulations make further provision about authorisation under this section including (in particular) the process for requests for their authorisation.

## **11 Request for authorisation**

- (1) A request for authorisation under section 10 may be—
  - (a) made at any reasonable time (including at the same time as applying for approval under section 7),
  - (b) withdrawn by the approved regulator (or applicant) at any time by giving the Scottish Ministers written notice to that effect.
- (2) The Scottish Ministers must, with reasons, notify the approved regulator (or applicant) if they intend to—
  - (a) withhold their authorisation, or
  - (b) impose conditions under section 10(4)(b).
- (3) If notification is given to the approved regulator (or applicant) under subsection (2), it has 28 days beginning with the date of the notification (or such longer period as the Scottish Ministers may allow) to—
  - (a) make representations to the Scottish Ministers,
  - (b) take such steps as it may consider expedient.
- (4) The approved regulator (or applicant) must provide the Scottish Ministers with such information as they may reasonably require for their consideration of its request for their authorisation.
- (5) In section 10 and this section, a reference to authorisation means initial or renewed authorisation.

## *Regulatory schemes*

### **12 Regulatory schemes**

- (1) An approved regulator must—
  - (a) make a regulatory scheme for licensing and regulating the provision of legal services by its licensed legal services providers, and
  - (b) apply the scheme in relation to them.
- (2) The regulatory scheme is to—
  - (a) contain—
    - (i) the licensing rules (see section 14),
    - (ii) the practice rules (see section 18),
    - (iii) the compensation rules (see sections 25 and 26(1)),
  - (b) include provision for reconciling different sets of regulatory rules (see section 13),
  - (c) cover such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as the regulations may specify).
- (3) The regulatory scheme may—
  - (a) relate to—
    - (i) one or more categories of licensed provider,
    - (ii) some or all legal services,
  - (b) make different provision for different cases or types of case.
- (4) An approved regulator may amend its regulatory scheme (or any aspect of it), but—
  - (a) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,
  - (b) the Scottish Ministers may not give their approval without—
    - (i) the Lord President’s agreement, and
    - (ii) consulting such other person or body as they consider appropriate.
- (5) The Scottish Ministers may by regulations—
  - (a) confer authority for the regulatory schemes of approved regulators to deal with the provision by their licensed providers of such other services (in addition to legal services) as the regulations may prescribe, and
  - (b) specify the extent to which (and the manner in which) the regulatory schemes may do so.

### **13 Reconciling different rules**

- (1) The provision required by section 12(2)(b) to be in the regulatory scheme is such provision as is reasonably practicable (and appropriate in the circumstances) for—
  - (a) preventing or resolving regulatory conflicts, and
  - (b) avoiding unnecessary duplication of regulatory rules.
- (2) For the purposes of this section, a regulatory conflict is a conflict between—
  - (a) the regulatory scheme of an approved regulator, and
  - (b) any professional or regulatory rules made by any other body which regulates the provision of legal or other services.

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- (3) The Scottish Ministers may by regulations make further provision about regulatory conflicts (such as may involve an approved regulator).
- (4) Before making regulations under subsection (3), the Scottish Ministers must have the Lord President's agreement.

### *Licensing rules*

#### **14 Licensing rules: general**

- (1) For the purposes of this Part, the licensing rules are rules about—
  - (a) the procedure for becoming a licensed provider, including (in particular)—
    - (i) the making of applications,
    - (ii) the criteria to be met by applicants,
    - (iii) the determination of applications,
    - (iv) the issuing of licences,
  - (b) the terms of licences and attaching to licences of conditions or restrictions,
  - (c) the—
    - (i) renewal of licences,
    - (ii) circumstances in which licences may be revoked or suspended,
  - (d) licensing provision affecting non-solicitor investors in licensed providers,
  - (e) licensing fees that are chargeable by the approved regulator.
- (2) Rules made in pursuance of subsection (1)(a) to (c) must allow for review by the approved regulator of any decision made by it under the rules that materially affects an applicant for a licence or (as the case may be) a licensed provider.
- (3) Licensing rules may include such further licensing arrangements as to licensed providers for which provision is (in the approved regulator's opinion) necessary or expedient.
- (4) See also sections 55(6)(b), 57(4), 62(2), 63(3) and 67(2)(b) and paragraph 4(2) of schedule 8 (as well as sections 15 and 16).

#### **15 Initial considerations**

- (1) Licensing rules must provide for—
  - (a) consultation with the OFT, where appropriate in accordance with subsection (2), in relation to a licence application,
  - (b) how the approved regulator is to deal with a licence application where it believes that granting it would cause (directly or indirectly) a material and adverse effect on the provision of legal services.
- (2) For the purpose of subsection (1)(a), it is appropriate to consult the OFT where the approved regulator believes that the granting of the licence application may have the effect of—
  - (a) preventing competition within the legal services market, or
  - (b) significantly restricting or distorting such competition.

## 16 Other licensing rules

- (1) Licensing rules may allow for—
  - (a) an applicant to be issued with a provisional licence—
    - (i) in anticipation of its becoming (or becoming eligible to be) a licensed provider, and
    - (ii) whose full effect as a licence is conditional on its becoming a licensed provider (and such other relevant matters as the rules may specify), or
  - (b) a licensed provider to be issued with a provisional licence—
    - (i) in anticipation of its transferring to the regulation of the approved regulator, and
    - (ii) whose full effect as a licence is conditional on the transfer occurring (and such other relevant matters as the rules may specify).
- (2) Licensing rules must—
  - (a) state that a licence application may be refused on the ground that the applicant appears to be incapable (for any reason) of complying with the regulatory scheme,
  - (b) provide for grounds for non-renewal, revocation or suspension of a licence where the licensed provider is breaching (or has breached) the regulatory scheme.

## 17 Licensing appeals

- (1) An applicant for a licence or (as the case may be) a licensed provider may appeal against a relevant licensing decision taken by virtue of this Part—
  - (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which that decision is intimated to it.
- (2) A relevant licensing decision is a decision to—
  - (a) refuse the licensed provider's application for—
    - (i) a licence, or
    - (ii) renewal of its licence,
  - (b) attach conditions or restrictions to its licence, or
  - (c) revoke or suspend its licence.

### *Practice rules*

## 18 Practice rules: general

- (1) For the purposes of this Part, the practice rules are rules about—
  - (a) the—
    - (i) operation and administration of licensed providers,
    - (ii) standards to be met by licensed providers,
  - (b) the operational positions within licensed providers,
  - (c) accounting and auditing (see section 22),
  - (d) professional indemnity (see section 23),
  - (e) the making and handling of any complaint about—

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- (i) a licensed provider,
  - (ii) a designated or other person within a licensed provider,
- (f) the measures that may be taken by the approved regulator, in relation to a licensed provider, if—
  - (i) there is a breach of the regulatory scheme, or
  - (ii) a complaint referred to in paragraph (e) is upheld.
- (2) Rules made in pursuance of subsection (1)(f) must allow a licensed provider to make representations to the approved regulator before it takes any of the measures available to it under the rules.
- (3) Practice rules may include such further arrangements as to the professional practice, conduct or discipline of licensed providers for which provision is (in the approved regulator’s opinion) necessary or expedient.
- (4) See also sections 55(6)(a), 57(5) and 65(4) (as well as sections 19 to 23).

## **19 Financial sanctions**

- (1) Practice rules made in pursuance of section 18(1)(f) may provide for the imposition of a financial penalty.
- (2) A financial penalty provided for by virtue of subsection (1) must not exceed the maximum amount permitted by the Scottish Ministers when giving their approval under section 7.
- (3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the approved regulator may collect it on their behalf).
- (4) A licensed provider may appeal against a financial penalty (or the amount of a financial penalty) imposed on it by virtue of this section—
  - (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the penalty is intimated to it.
- (5) Where an appeal is made under subsection (4), no part of the penalty requires to be paid before the appeal is determined or withdrawn.

## **20 Enforcement of duties**

- (1) Practice rules must include provision that it is a breach of the regulatory scheme for a licensed provider to—
  - (a) fail to comply with section 50, or
  - (b) fail to comply with its—
    - (i) other duties under this Part, or
    - (ii) duties under any other enactment specified in the scheme.
- (2) Practice rules must require a licensed provider to—
  - (a) review and report on its performance (see section 21), and
  - (b) have its performance and that report assessed by the approved regulator.



## **21 Performance report**

- (1) Practice rules made by reference to section 20(2)(a) are (in particular) to give the Head of Practice of a licensed provider the functions of—
  - (a) carrying out an annual review, and
  - (b) sending a report (in a specified form) on the review to the approved regulator.
- (2) The review must include an examination of—
  - (a) the licensed provider’s compliance with section 50(1), and
  - (b) the involvement of any non-solicitor investors in the licensed provider.
- (3) Practice rules made by reference to section 20(2)(b) may describe the approved regulator’s functions under section 31.

## **22 Accounting and auditing**

Practice rules must—

- (a) require licensed providers to keep in place proper accounting and auditing procedures,
- (b) include provision corresponding to that applying under sections 35 to 37 (accounts rules) of the 1980 Act in relation to an incorporated practice.

## **23 Professional indemnity**

Practice rules must—

- (a) require licensed providers to keep in place sufficient arrangements for professional indemnity,
- (b) include provision corresponding to that applying under section 44 (professional indemnity) of the 1980 Act in relation to an incorporated practice.

### *Compensation arrangements*

## **24 Choice of arrangements**

- (1) An approved regulator must proceed with either option A or option B as regards a compensation fund from which to make good such relevant losses as may be suffered by reason of dishonesty on the part of its licensed legal services providers.
- (2) Option A is for the approved regulator to maintain its own compensation fund (separate from the Guarantee Fund) in relation to its licensed providers.
- (3) If option A is proceeded with, the compensation fund is to be—
  - (a) held by the approved regulator for such purpose as corresponds to the purpose for which the Guarantee Fund is held under section 43(2)(c) of the 1980 Act in relation to licensed providers,
  - (b) administered by it in such way as corresponds to the administration of the Guarantee Fund in accordance with section 43(3) to (7) of, and Part I of Schedule 3 to, the 1980 Act (so far as applicable in relation to licensed providers).

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- (4) Option B is for the approved regulator, by not maintaining its own compensation fund as mentioned in option A, to cause the Guarantee Fund to be administered as respects its licensed providers.
- (5) For the purpose of option B, see section 43(2)(c) to (8) of, and Part I of Schedule 3 to, the 1980 Act.
- (6) As soon as it has decided which of options A and B to proceed with, the approved regulator (where not the Law Society) must inform the Law Society of its decision.

## **25 Compensation rules: general**

- (1) For the purposes of this Part, the compensation rules are rules in pursuance of (as the case may be)—
  - (a) option A in section 24, or
  - (b) option B in that section.
- (2) In pursuance of option A, the rules must—
  - (a) state—
    - (i) the purpose of the approved regulator’s compensation fund,
    - (ii) as a minimum, the monetary amount to be contained in that fund,
  - (b) describe the way in which that fund is to be administered by the approved regulator,
  - (c) specify the criteria for qualifying for payment out of that fund,
  - (d) provide for the procedure for—
    - (i) making claims for such payment,
    - (ii) determining such claims,
  - (e) require the making of contributions to that fund by a licensed provider in accordance with the relevant scale of annual contributions fixed by virtue of section 24(3)(b),
  - (f) make provision for the destination (or distribution) of that fund in the event that the approved regulator ceases to operate.
- (3) In pursuance of option B, the rules must require the making of contributions to the Guarantee Fund by a licensed provider in accordance with the relevant scale of annual contributions fixed under paragraph 1(3) of Schedule 3 to the 1980 Act.

## **26 More about compensation arrangements**

- (1) Compensation rules may include such further compensation arrangements as to licensed providers for which provision is (in the approved regulator’s opinion) necessary or expedient.
- (2) The Scottish Ministers may by regulations make further provision about compensation arrangements as to licensed providers, including (in particular)—
  - (a) for the content of compensation rules,
  - (b) in connection with a compensation fund, for functions of approved regulators and licensed providers.

- (3) In sections 24 and 25 and this section, the references to the Guarantee Fund are to the Scottish Solicitors Guarantee Fund (which is vested in the Law Society under section 43(1) of the 1980 Act).

### *Internal governance*

## **27 Internal governance arrangements**

- (1) The internal governance arrangements of an approved regulator must incorporate such provision as is necessary with a view to ensuring that the approved regulator will—
- (a) always exercise its regulatory functions—
    - (i) independently of any other person or interest,
    - (ii) properly in other respects (in particular, with a view to achieving public confidence),
  - (b) continue to allocate sufficient resources (financial and otherwise) to the exercise of its regulatory functions,
  - (c) review regularly how effectively it is exercising its regulatory functions (in particular, by reviewing the effectiveness of its regulatory scheme).
- (2) In relation to an approved regulator which has representative functions, relevant factors in connection with subsection (1)(a) include (in particular) the need for—
- (a) the approved regulator’s code of conduct (if any) for its members to be compatible with the regulatory objectives and the professional principles,
  - (b) the approved regulator to—
    - (i) exercise its regulatory functions separately from its other functions (in particular, any representative functions), and
    - (ii) avoid conflicts of interest in relation to its regulatory functions,
  - (c) the approved regulator to secure that a reasonable proportion of the individuals who are responsible for the exercise of its regulatory functions are not qualified legal practitioners.
- (3) The approved regulator’s regard to the factor mentioned in subsection (2)(b) is demonstrable by (for example) its securing that within its structure its regulatory functions are clearly demarcated.

## **28 Communicating outside**

- (1) The internal governance arrangements of an approved regulator must not, in relation to the persons who are involved in the exercise of its regulatory functions, prevent the persons from engaging in consultation or other communication with—
- (a) other approved regulators,
  - (b) the Scottish Ministers,
  - (c) the Scottish Legal Aid Board,
  - (d) the Scottish Legal Complaints Commission, or
  - (e) the OFT, or any other public body which has functions concerning the application of competition law.
- (2) Where an approved regulator has representative functions, its internal governance arrangements must not, in relation to any person who—
- (a) is involved in the exercise of its regulatory functions, and

(b) considers that the independence or effectiveness of the approved regulator’s exercise of its regulatory functions is being (or has been) for any reason adversely affected by the furtherance of its representative functions,  
 prevent the person from notifying the Scottish Ministers accordingly.

- (3) Subsections (1) and (2) are subject to any overriding prohibition or restriction arising by virtue of any relevant—
- (a) enactment or rule of law, or
  - (b) rule of professional conduct or ethics.

## **29 More about governance**

- (1) The Scottish Ministers may by regulations make further provision about the internal governance arrangements of approved regulators.
- (2) However, regulations under subsection (1) must relate to the regulatory functions of approved regulators.
- (3) Before making regulations under subsection (1), the Scottish Ministers must—
  - (a) have the Lord President’s agreement, and
  - (b) consult any approved regulator that would be affected by the regulations.
- (4) For the purposes of this Part, the internal governance arrangements of an approved regulator are its own organisational and operational arrangements for the carrying out of its activities.

### *Regulatory functions etc.*

## **30 Regulatory and representative functions**

- (1) For the purposes of this Part, the regulatory functions of an approved regulator are the approved regulator’s functions of regulating its licensed legal services providers including (in particular) its functions—
  - (a) in relation to its regulatory scheme,
  - (b) under section 31.
- (2) For the purposes of this Part, the representative functions of an approved regulator are any functions that the approved regulator has, in that or any other capacity, of representing or promoting the interests of the individual persons (taken collectively or otherwise) who form its membership.
- (3) Nothing in this Part permits the Scottish Ministers to interfere with an approved regulator’s representative functions (but this does not prevent the Scottish Ministers from taking such action under this Part as they consider appropriate for the purpose of ensuring that an approved regulator’s regulatory functions are not prejudiced by its representative functions).

## **31 Assessment of licensed providers**

- (1) An approved regulator must assess the performance of each of its licensed providers at least once in every successive period of 3 years from (in each case) the date on which the approved regulator issued the licensed provider with its licence.

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- (2) The Scottish Ministers may require an approved regulator to carry out a special assessment of a licensed provider if the Scottish Legal Complaints Commission requests that they do so in a case where the Commission has significant concerns about how a complaint about a licensed provider has been dealt with.
- (3) An assessment under this section must (in particular) concern—
  - (a) the licensed provider’s compliance with section 50(1), and
  - (b) such other matters as the approved regulator considers appropriate.
- (4) When conducting the assessment, the approved regulator may—
  - (a) require from the licensed provider the production of any—
    - (i) relevant documents,
    - (ii) other relevant information,
  - (b) interview any person within the licensed provider.
- (5) The approved regulator must—
  - (a) prepare a report on the assessment, and
  - (b) send a copy of the report to the licensed provider (and, if the assessment was required under subsection (2), also send one to the Scottish Ministers and the Commission).
- (6) Before finalising the report, the approved regulator must—
  - (a) send a draft of the report to the licensed provider, and
  - (b) give it a reasonable opportunity to make representations about—
    - (i) the findings of the assessment, and
    - (ii) any recommendations contained in the report.
- (7) If the assessment discloses (or appears to disclose) any professional misconduct by a member of a professional association, the approved regulator must notify that association accordingly.
- (8) An approved regulator may delegate any of its functions under this section to any suitable person or body.
- (9) The Scottish Ministers may by regulations make further provision about the assessment of licensed providers.

#### *Relationship with other bodies*

### **32 Giving information to SLAB**

- (1) An approved regulator must provide the Scottish Legal Aid Board with such information as the Board may reasonably require for the purpose mentioned in subsection (2).
- (2) The purpose is the Board’s exercise of its function under section 1(2A) of the 1986 Act.

### **33 Reporting to Law Society**

- (1) This section applies in relation to any licensed legal services provider (whose approved regulator is not the Law Society) that is required, by compensation rules made by reference to section 25(3), to make contributions to the Guarantee Fund.

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- (2) The approved regulator must report to the Law Society any—
  - (a) breach of the regulatory scheme by the licensed provider that the approved regulator discovers as regards the procedures arising under practice rules made by reference to section 22,
  - (b) suspicion held by the approved regulator that there is engagement in such financial impropriety as may (in the approved regulator’s opinion) give rise to the risk of a claim being made on the Guarantee Fund.
- (3) The approved regulator must make available to the Law Society any report prepared by the approved regulator about an inspection carried out by it as regards compliance with—
  - (a) the procedures arising under practice rules made by reference to section 22,
  - (b) any other financial procedure as regards which the approved regulator has functions under this Part.
- (4) The approved regulator must inform the Law Society of any further action that it intends to take (or has taken) in relation to any of the matters mentioned in subsections (2) and (3).
- (5) In this section and section 34, the references to the Guarantee Fund are to it as defined in section 26(3).

### **34 Steps open to Society**

- (1) Where—
  - (a) section 33 applies, and
  - (b) the Law Society suspects that the approved regulator is failing to enforce under this Part any financial procedure to which that section relates,
 the Society may refer the circumstances to the Scottish Ministers.
- (2) But the Society may make a referral under subsection (1) only if—
  - (a) it has made representations to the approved regulator in respect of its suspicion, and
  - (b) in light of any response to them (or where none is received timeously), its suspicion is not relieved.
- (3) In a referral under subsection (1), the Society may—
  - (a) request that the Scottish Ministers take such action under this Part as they consider appropriate,
  - (b) seek their consent to the Society’s taking of the step mentioned in subsection (5).
- (4) That consent may be—
  - (a) sought only if the Society suspects that the suspected failure may be facilitating to any extent engagement in such financial impropriety as may (in the Society’s opinion) give rise to the risk of a claim being made on the Guarantee Fund,
  - (b) given only if the Scottish Ministers are satisfied (on information provided by the Society) that—
    - (i) the Society’s suspicions are reasonable, and
    - (ii) it is necessary (by way of investigation) that the step be taken.

- (5) The step is that the Society inspect, at the licensed provider's premises, any document, record or other information (in any form) found there which—
- (a) relates to—
    - (i) the licensed provider's client account, or
    - (ii) any other financial account held by it, and
  - (b) is relevant in relation to any financial procedure to which section 33 relates.

### **35 Financial inspection by Society**

- (1) If the relevant consent is given under subsection (4)(b) of section 34, the Law Society may take the step mentioned in subsection (5) of that section.
- (2) The licensed provider must co-operate with the Society in connection with the taking of the step.
- (3) But the Society does not have authority to take the step (or enter the premises) unless the Society has—
- (a) consulted the approved regulator about the taking of it, and
  - (b) given the licensed provider at least 48 hours notice of the taking of it.
- (4) Following the taking of the step, the Society—
- (a) must report its findings to—
    - (i) the approved regulator, and
    - (ii) the Scottish Ministers,
  - (b) in the report to the Scottish Ministers, may request that they take such action (or further action) under this Part as they consider appropriate.
- (5) In this section, the references to taking the step mentioned in section 34(5) are to its being taken by the Society's representatives as appointed for the purpose of this section.

### *Performance and measures*

### **36 Review of own performance**

- (1) An approved regulator must review annually its performance.
- (2) In particular, a review is to cover the following matters—
- (a) the approved regulator's compliance with section 77,
  - (b) the exercise of its regulatory functions,
  - (c) the operation of its internal governance arrangements,
  - (d) its compliance with any measures applying to it by virtue of section 38(4)(a) or (b).
- (3) The approved regulator must send a report on the review to the Scottish Ministers.
- (4) The report must contain a copy of the approved regulator's annual accounts (but only so far as they are relevant in connection with its functions under this Part).
- (5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (6) The Scottish Ministers may by regulations make further provision about—

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- (a) the review of approved regulators' performance,
- (b) reports on reviews of their performance.

### **37 Monitoring by Ministers**

- (1) The Scottish Ministers may monitor the performance of approved regulators in such manner as they consider appropriate.
- (2) Monitoring the performance of an approved regulator includes (in particular) doing so by reference to—
  - (a) its compliance with section 77,
  - (b) the exercise of its regulatory functions,
  - (c) the operation of its internal governance arrangements,
  - (d) its compliance with any measures applying to it by virtue of section 38(4)(a) or (b).
- (3) An approved regulator must—
  - (a) provide such information about its performance in relation to its regulatory scheme as the Scottish Ministers may reasonably request,
  - (b) do so within 21 days beginning with the date of the request (or such longer period as the Scottish Ministers may allow).

### **38 Measures open to Ministers**

- (1) The Scottish Ministers may, in relation to an approved regulator, take one or more of the measures mentioned in subsection (4) if they consider that to be appropriate in the circumstances of the case.
- (2) When considering the appropriateness of taking any of those measures, or a combination of them, the Scottish Ministers must (except in the case of a measure mentioned in paragraph (f) of that subsection) have particular regard to the effect that it may have on the approved regulator's observance of the regulatory objectives.
- (3) Schedules 1 to 6 (to which subsection (1) is subject) respectively make provision concerning the measures mentioned in subsection (4).
- (4) The measures are—
  - (a) setting performance targets,
  - (b) directing that action be taken,
  - (c) publishing a statement of censure,
  - (d) imposing a financial penalty,
  - (e) amending an authorisation given under section 10,
  - (f) rescinding an authorisation given under that section.
- (5) The rescission of an authorisation by virtue of subsection (4)(f) has the effect of terminating the associated approval (of the approved regulator) given under section 7, except where it is stated under paragraph 5(3)(b) of schedule 6 that the approval is preserved.
- (6) The Lord President's agreement is required for the taking of any of the measures mentioned in subsection (4) except paragraph (d).
- (7) The Scottish Ministers may by regulations—



- (a) specify other measures that may be taken by them,
  - (b) make further provision about the measures that they may take (including for the procedures to be followed),
- in relation to approved regulators.
- (8) Before making regulations under subsection (7), the Scottish Ministers must—
- (a) have the Lord President’s agreement, and
  - (b) consult every approved regulator.

### *Ceasing to regulate*

#### **39 Surrender of authorisation**

- (1) An approved regulator may, with the prior agreement of the Scottish Ministers, surrender the authorisation given to it under section 10.
- (2) Schedule 7 (to which subsection (1) is subject) makes provision concerning the surrender of such an authorisation.
- (3) An approved regulator must take all reasonable steps to ensure that the effective regulation of its licensed providers is not interrupted by the surrender of such an authorisation.
- (4) The surrender of an authorisation by virtue of subsection (1) has the effect of terminating the associated approval (of the approved regulator) given under section 7.

#### **40 Cessation directions**

- (1) This section applies where—
  - (a) an approved regulator amends its regulatory scheme so as to exclude the regulation of particular categories of licensed providers or legal services, or
  - (b) the authorisation of an approved regulator is to be (or has been)—
    - (i) amended by virtue of section 38(4)(e) so as to exclude the regulation of certain categories of licensed providers or legal services,
    - (ii) rescinded by virtue of section 38(4)(f), or
    - (iii) surrendered by virtue of section 39(1).
- (2) The Scottish Ministers may direct the approved regulator to take specified action (or refrain from doing something) if they consider that to be necessary or expedient for the continued effective regulation of a licensed provider.
- (3) The approved regulator must (so far as practicable) comply with a direction given to it under subsection (2).
- (4) For the purposes of this section, a reference to an approved regulator includes (as the context requires) a former approved regulator.

#### **41 Transfer arrangements**

- (1) This section applies where—
  - (a) an approved regulator has amended its regulatory scheme so as to exclude the regulation of particular categories of licensed provider or legal services,

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- (b) the authorisation of an approved regulator is to be (or has been)—
    - (i) amended by virtue of section 38(4)(e) so as to exclude the regulation of particular categories of licensed provider or legal services,
    - (ii) rescinded by virtue of section 38(4)(f), or
    - (iii) surrendered by virtue of section 39(1), or
  - (c) the approved regulator is otherwise unable to continue to regulate some or all of its licensed providers.
- (2) The approved regulator must (as soon as reasonably practicable)—
- (a) notify each of its licensed providers of the relevant situation within subsection (1),
  - (b) do so by reference to any effective date.
- (3) A notification under subsection (2) must inform each licensed provider as to whether it requires, in consequence of the relevant situation, to transfer to the regulation of a different approved regulator (a “new regulator”) from the one which issued its current licence (the “current regulator”).
- (4) Each licensed provider that is so required to transfer to a new regulator must—
- (a) within 28 days beginning with the date of the notification, or failing which as soon as practicable, take all reasonable steps so as to transfer to the regulation of a new regulator, and
  - (b) where it does so transfer, take (as soon as practicable) such steps as are necessary to ensure that it complies with the new regulator’s regulatory scheme before the end of the changeover period.
- (5) For the purpose of subsection (4)(b), the changeover period is the period of 6 months beginning with the date on which the new regulator takes over the regulation of the licensed provider.
- (6) On the coming into effect of a licence issued to the licensed provider by a new regulator, the licence issued to it by the current regulator ceases to have effect.

## **42 Extra arrangements**

- (1) The Scottish Ministers may by regulations make provision in connection with section 41 as to the arrangements for the transfer of licensed providers to the regulation of a different approved regulator (a “new regulator”).
- (2) Regulations under subsection (1) may (in particular)—
- (a) provide for a licensed provider which has not transferred to the regulation of a new regulator to be regulated by such new regulator as may be appointed by the Scottish Ministers with the new regulator’s consent,
  - (b) provide for the Scottish Ministers to recover on behalf of the new regulator, or a licensed provider, any fee (or a part of it) paid by the licensed provider to the former approved regulator in connection with the licensed provider’s current licence.

### *Change of regulator*

#### **43 Change of approved regulator**

- (1) A licensed legal services provider may transfer voluntarily to the regulation of a different approved regulator (a “new regulator”) from the one which issued its current licence (the “current regulator”).
- (2) But the transfer requires the new regulator’s written consent (and its agreement to issue the licensed provider with a licence having effect from the date on which the transfer is to occur).
- (3) Where a licensed provider wishes to do so, it must—
  - (a) give a notice which complies with subsection (4) to—
    - (i) the current regulator, and
    - (ii) the Scottish Ministers, and
  - (b) provide such further information as may reasonably be required by either of them.
- (4) A notice complies with this subsection if it—
  - (a) explains why the licensed provider wishes to transfer to the regulation of a new regulator,
  - (b) specifies—
    - (i) the new regulator,
    - (ii) the date on which the transfer is to occur (which must be within 28 days of the date of the notice), and
  - (c) is accompanied by a copy of the new regulator’s written consent to the transfer.
- (5) On the coming into effect of a licence issued to the licensed provider by a new regulator, the licence issued to it by the current regulator ceases to have effect.
- (6) The Scottish Ministers may by regulations make further provision about the transfer by a licensed provider to the regulation of a new regulator.

#### **44 Step-in by Ministers**

- (1) The Scottish Ministers may by regulations make provision which establishes a body with a view to its becoming an approved regulator.
- (2) The Scottish Ministers may by regulations make provision which allows them to act as an approved regulator in such circumstances as the regulations may prescribe.
- (3) Regulations under subsection (2) may provide for this Part to apply with or subject to such modifications as the regulations may specify.
- (4) No regulations are to be made under subsection (1) or (2)—
  - (a) without the Lord President’s agreement, and
  - (b) unless the Scottish Ministers believe that their intervention under this section is necessary, as a last resort, in order to ensure that the provision of legal services by licensed providers is regulated effectively.

*Additional functions etc.*

**45 Additional powers and duties**

- (1) The Scottish Ministers may by regulations make provision conferring on approved regulators such additional functions as they consider appropriate for the purposes of this Part.
- (2) Before making regulations under subsection (1), the Scottish Ministers must—
  - (a) have the Lord President’s agreement, and
  - (b) consult—
    - (i) every approved regulator,
    - (ii) such other person or body as they consider appropriate.

**46 Guidance on functions**

- (1) In exercising its functions under this Part, an approved regulator must have regard to any guidance issued (to approved regulators generally) by the Scottish Ministers for the purposes of or in connection with this Part.
- (2) Before issuing such guidance, the Scottish Ministers must consult—
  - (a) every approved regulator,
  - (b) such other person or body as they consider appropriate.
- (3) The Scottish Ministers must publish any such guidance as issued (or re-issued).