

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 1 – Approved Regulators

Licensing rules

Section 14 – Licensing rules: general

Section 15 – Initial considerations

43. *Sections 14 and 15* give details about what the licensing rules that are to be contained in an approved regulator's regulatory scheme, cover. Licensing rules cover areas such as the procedure and requirements involved in making an application to become a licensed provider (including fees payable to the approved regulator).
44. The general approach of the Act is to set out a broad framework and allow approved regulators the flexibility to devise an appropriate set of rules as best fits the services being regulated and which follows best regulatory practice. However, in some instances the Act requires certain mandatory provisions to be contained in the licensing rules. The rules must include provision for consultation with the OFT (see section 15(1)(a) and (2)) where there may be an effect of preventing or restricting or distorting competition within the legal services market, and must set out how the regulator would deal with an application where it believes there would be a material and adverse effect on the provision of legal services (section 15(1)(b)).

Section 16 – Other licensing rules

45. This section provides for the possibility of provisional licences to allow a licensed provider to operate in anticipation of the full licence application being granted. This may be used, for example, in a situation where a licensed provider is transferring from one approved regulator to another. This section also requires licensing rules to make provision in relation to non-compliance with, or breaches of, the regulatory scheme.

Section 17 – Licensing appeals

46. This section provides for an appeal by a licensed provider (or an applicant to be a licensed provider) to the sheriff against a refusal of its application for a licence or to renew its licence, attach conditions or restrictions to its licence, or to suspend or revoke its licence.