

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – the Legal Profession

Chapter 3 – Solicitors and Other Representatives

Removal of practising restrictions

Section 123 – Licensed providers as qualified persons

245. **Section 123** makes various amendments to the 1980 Act to remove certain practising restrictions so as to allow the formation of licensed providers and remove particular offences
246. Subsection (1) amends section 26 of the 1980 Act (offence for solicitors to act as agents for unqualified persons) to ensure that a licensed provider is not deemed to be an “unqualified person”.
247. Subsection (2) amends section 30 of the 1980 Act (liability for fees of other solicitor) so that when a solicitor (or incorporated practice) acting on behalf of a client employs a licensed provider, the solicitor (or incorporated practice) is responsible for the licensed provider’s fees unless other arrangements to the contrary have been made.
248. Subsection (3) amends section 31 of the 1980 Act (offence for unqualified persons to pretend to be solicitor or notary public) to require that a licensed provider has the Society’s written permission before they can call themselves solicitors or a firm of solicitors. The Council of the Society is required to make rules setting out the procedure for obtaining permission and the grounds on which it may be refused.
249. Subsection (4) amends section 32 of the 1980 Act (offence for unqualified persons to prepare certain documents) so that it is clear that a licensed provider can prepare writs relating to moveable or heritable estate, writs relating to actions or proceedings in court, and papers relating to an application for grant of confirmation in favour of executors.
250. Subsection (5) amends section 33 of the 1980 Act (unqualified persons not entitled to fees, etc.) which deals with unqualified persons not being entitled to fees or other reward or expenses to ensure that this section does not apply to licensed providers.
251. Subsection (6) adds certain definitions to section 65(1) (interpretation) of the 1980 Act in relation to the amendments made by the Act.
252. Subsection (7) amends section 17 of the 1990 Act (qualified conveyancers) to ensure that independent qualified conveyancers can provide conveyancing services upon the account of, or for the profit of, licensed providers.

Section 124 – Practice rules for licensed providers

253. As with section 123 of the Act, this section amends the 1980 Act to remove restrictions which would prevent the formation of licensed providers.
254. Section 34 of the 1980 Act is concerned with the practice rules made by the Council in respect of the professional practice, conduct and discipline of solicitors.
255. Subsection (1) inserts a new section 33C into the 1980 Act to ensure that any rules made under section 34 of that Act do not unduly restrict the involvement of solicitors in or with a licensed provider, or the employment of solicitors by a licensed provider. Subsection (2) makes various amendments to the 1980 Act consequential on subsection (1).
256. Subsection (2) also amends the 1980 Act and the 1990 Act to remove references to multi-disciplinary practices. Multi-disciplinary practices will be an available business option for licensed providers under this Act.

Section 125 – Citizens advice bodies

257. **Section 125** amends section 26 of the 1980 Act so that it is not an offence for solicitors to be employed by citizens advice bodies to give legal advice to third parties. This is similar to the exemption given to law centres in the same section of that Act. A “citizens advice body” is defined in section 65(1) of the 1980 Act as a non-profit making body that has the sole or primary objective of providing legal and other advice (including information) to the public without charge. There is also provision of a power for the Scottish Ministers to modify the definition of “citizens advice body” by regulations after consulting with the Lord President, the OFT, and other appropriate organisations.