



# 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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*Status: This is the original version (as it was originally enacted).*

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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,

- (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.