

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

3. The principal effect of the Legal Services (Scotland) Act 2010 (“the Act”) is to liberalise the legal services market in Scotland by allowing solicitors who offer legal services to operate using certain business models which are currently prohibited. It will do this by making amendments to the Solicitors (Scotland) Act 1980 (“the 1980 Act”) to remove restrictions on solicitors entering into business relationships with non-solicitors, allowing investment by non-solicitors and external ownership (see sections 123 and 124), and by creating a regulatory framework in which the new types of business will operate (see Parts 1 and 2). It is enabling rather than prescriptive legislation, as the traditional business models will remain an option for those solicitors who choose to carry on practising within those structures.
4. The Act will create a tiered regulatory framework in which the Scottish Government will be responsible for approving and licensing regulators (“approved regulators”), who in turn will regulate licensed legal services providers (“licensed providers”), as shown below:
 - firstly, the Scottish Ministers will license and regulate approved regulators.
 - secondly, the approved regulators will license and regulate licensed providers.
 - thirdly, a licensed provider, as a regulated body, will have obligations to manage and oversee people in the entity – including lawyers, other professionals and non-professionals – in a way which is compatible with the regulatory regime imposed by the approved regulator.
5. The Act also includes:
 - regulatory objectives and professional principles which will apply to legal professionals, whether or not they choose to join licensed providers;
 - measures to reflect changes in the governance of the Law Society of Scotland (“the Society”);
 - statutory codification of the framework for the regulation of the Faculty of Advocates (“the Faculty”);
 - provisions enabling the Scottish Legal Aid Board (“the Board”) to monitor the availability and accessibility of legal services in Scotland, with assistance from approved regulators and others;
 - a new regulatory complaint that will be dealt with by the Scottish Legal Complaints Commission (“SLCC”);
 - provisions to allow others to apply for rights to obtain confirmation to the estates of deceased persons;
 - a new scheme for the regulation of non-lawyer will writers; and

*These notes relate to the Legal Services (Scotland) Act 2010
(asp 16) which received Royal Assent on 9 November 2010*

- provisions to allow lay representatives to make oral submissions in civil cases.