



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 2

#### REGULATION OF LICENSED LEGAL SERVICES

### CHAPTER 3

#### FURTHER PROVISION

##### *Achieving regulatory aims*

#### **76 Input by the OFT**

- (1) The Scottish Ministers or (as the case may be) an approved regulator must, whenever consulting the OFT under this Part, request the OFT—
  - (a) to give such advice as it considers appropriate in relation to the matter concerned,
  - (b) in considering what advice to give, to have particular regard to whether the matter concerned would have (or be likely to have) the effect of preventing, or significantly restricting or distorting, competition within the legal services market.
- (2) The Scottish Ministers are or (as the case may be) the approved regulator is to take account of any advice given by the OFT within—
  - (a) the relevant consultation period, or
  - (b) otherwise—
    - (i) in the case of the Scottish Ministers, the period of 90 days beginning with the day on which they request the advice,
    - (ii) in the case of the approved regulator, the period of 30 days beginning on the day on which it requests the advice or such longer period not exceeding 90 days as it may agree with the OFT.
- (3) The Scottish Ministers may publish any advice duly given to them by the OFT.

## **77 Role of approved regulators**

- (1) Subsections (2) to (4) apply in relation to the exercise by an approved regulator of its functions under this Part.
- (2) The approved regulator must, so far as practicable, act in a way which—
  - (a) is compatible with the regulatory objectives, and
  - (b) it considers most appropriate with a view to meeting those objectives.
- (3) The approved regulator must adopt best regulatory practice under which (in particular) regulatory activities should be—
  - (a) carried out—
    - (i) effectively (but without giving rise to unnecessary burdens),
    - (ii) in a way that is transparent, accountable, proportionate and consistent,
  - (b) targeted only at such cases as require action.
- (4) The approved regulator must seek to ensure that its licensed legal services providers have regard to the regulatory objectives.

## **78 Policy statement**

- (1) An approved regulator must prepare and issue a statement of policy as to how, in exercising its functions under this Part, it will comply with its duties under section 77.
- (2) The approved regulator—
  - (a) may revise the policy statement,
  - (b) if it does so, must re-issue the policy statement.
- (3) The approved regulator may issue (or re-issue) the policy statement only with the approval of the Scottish Ministers.
- (4) The approved regulator must publish the policy statement as issued (or re-issued).
- (5) In exercising its functions under this Part, the approved regulator must have regard to the policy statement as issued (or re-issued).

### *Complaints*

## **79 Complaints about regulators**

- (1) Any complaint about an approved regulator is to be made to the Scottish Legal Complaints Commission.
- (2) The Commission is to determine whether or not the complaint is—
  - (a) one for which section 57E(1) of the 2007 Act makes provision,
  - (b) frivolous, vexatious or totally without merit.
- (3) And—
  - (a) if the Commission determines that the complaint falls within subsection (2) (a), the Commission is to proceed by reference to section 57E(1) of the 2007 Act,
  - (b) if the Commission determines that the complaint falls within subsection (2) (b), the Commission—

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- (i) must notify the complainer and the approved regulator accordingly (with reasons),
    - (ii) is not required to take any further action,
  - (c) if the Commission determines that the complaint does not fall within subsection (2)(a) or (b), the Commission must refer the complaint to the Scottish Ministers.
- (4) The Scottish Ministers must investigate any complaint about an approved regulator that is referred to them under subsection (3)(c).
- (5) Where the Scottish Ministers do not uphold the complaint, they must notify the complainer and the approved regulator accordingly (with reasons).
- (6) Where the Scottish Ministers uphold the complaint, they must—
  - (a) notify the complainer and the approved regulator accordingly (with reasons), and
  - (b) decide whether to proceed under section 38.
- (7) The Scottish Ministers may delegate to the Commission any of their functions under subsections (4), (5) and (6)(a) (and, if they so delegate their function under subsection (4), they may also waive the referral requirement under subsection (3)(c)).
- (8) The Scottish Ministers may by regulations make further provision about complaints made about approved regulators (and how they are to be dealt with).

## **80 Levy payable by regulators**

- (1) An approved regulator must pay to the Scottish Legal Complaints Commission—
  - (a) in respect of each financial year, an annual levy,
  - (b) if arising, a complaints levy.
- (2) The amount of the annual levy or complaints levy payable by an approved regulator—
  - (a) is to be determined by the Commission,
  - (b) may be—
    - (i) different from any amount payable as an annual general levy or (as the case may be) a complaints levy under Part 1 of the 2007 Act,
    - (ii) in either case, of different amounts (including nil) in different circumstances.
- (3) The complaints levy arises as respects an approved regulator where—
  - (a) the Scottish Ministers delegate to the Commission their function under section 79(4) in relation to a complaint made about the approved regulator, and
  - (b) the Commission upholds the complaint.
- (4) Before determining for a financial year the amount of the annual levy or complaints levy, the Commission must consult—
  - (a) each approved regulator (with particular reference to the proposed amount to be payable by it),
  - (b) the Scottish Ministers.

## **81 Complaints about providers**

In the 2007 Act, after Part 2 insert—

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## **“PART 2A**

### **SPECIAL PROVISION FOR LICENSED PROVIDERS**

#### **57A Complaints about licensed providers**

- (1) Parts 1 and 2 apply in relation to complaints made about licensed legal services providers as they apply in relation to complaints made about practitioners.
- (2) Subsection (1) is subject to—
  - (a) subsections (3) and (4), and
  - (b) such further modification to the operation of Parts 1 and 2 as the Scottish Ministers may by regulations make for the purposes of—
    - (i) subsection (1),
    - (ii) section 57B(4) and (5).
- (3) In relation to a services complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.
- (4) A conduct complaint may not be made about a licensed provider, but—
  - (a) such a complaint may be made about a practitioner within such a provider,
  - (b) the provisions relating to such a complaint remain (subject to such modification as to those provisions as is made under subsection (2)(b)) applicable for the purposes of section 57B(4) and (5).
- (5) Where an approved regulator receives (from a person other than the Commission) a complaint about the conduct of, or any services provided by, a practitioner within one of its licensed providers, the approved regulator must without delay send to the Commission the complaint and any material that accompanies it.

#### **57B Regulatory complaints**

- (1) There is an additional type of complaint which applies only in relation to licensed providers (a “regulatory complaint”).
- (2) A regulatory complaint is where any person suggests that a licensed provider is failing (or has failed) to—
  - (a) have regard to the regulatory objectives,
  - (b) adhere to the professional principles,
  - (c) comply with—
    - (i) its approved regulator’s regulatory scheme,
    - (ii) the terms and conditions of its licence.
- (3) In relation to a regulatory complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.
- (4) The procedure in respect of a regulatory complaint is (by virtue of section 57A(4)(b)) the same as it would be for a conduct complaint about a

licensed provider, subject to such modification as to that procedure as is made under section 57A(2)(b).

- (5) The Commission and the approved regulator have (by virtue of section 57A(4)(b)) the same functions in relation to a regulatory complaint as they would have in relation to a conduct complaint about a licensed provider, subject to such modification as to those functions as is made under section 57A(2)(b).

### **57C Levy, advice and guidance**

- (1) A licensed provider must pay to the Commission—
- (a) the annual general levy, and
  - (b) the complaints levy (if arising),
- in accordance with Part 1 (and in addition to any levy payable under that Part by a solicitor or other person within the licensed provider).
- (2) Section 29 applies for the purposes of subsection (1) as it applies for the purposes of sections 27(1) and 28(1).
- (3) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) and (2)—
- (a) an approved regulator is to be regarded as a relevant professional organisation whose members are its licensed providers,
  - (b) a licensed provider is to be regarded—
    - (i) in connection with the annual general levy, as an individual person falling within the relevant category,
    - (ii) in connection with the complaints levy, as an individual practitioner of the relevant type.
- (4) But the amount of the annual general levy for a licensed provider may be—
- (a) different from the amount to be paid by individuals,
  - (b) of different amounts (including nil) in different circumstances.
- (5) The Commission—
- (a) must (so far as practicable) provide advice to any person who requests it as respects the process of making a regulatory complaint to the Commission,
  - (b) may issue guidance under section 40 to approved regulators and licensed providers as respects how licensed providers are to deal with regulatory complaints.

### **57D Recovery of levy**

- (1) An approved regulator must—
- (a) secure the collection by it, from its licensed providers, of the annual general levy due by them, and
  - (b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.

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- (2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.
- (3) Subsection (4) of section 27 applies in relation to any sum due under section 57C(1)(a) (including interest) as it applies in relation to any sum due under subsection (1) of section 27.
- (4) Subsection (3) of section 28 applies in relation to any sum due under section 57C(1)(b) (including interest) as it applies in relation to any sum due under subsection (1) of section 28.
- (5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—
  - (a) the approved regulator is to be regarded as the relevant professional organisation,
  - (b) each of its licensed providers is to be regarded—
    - (i) in relation to section 27(4), as an individual person falling within the relevant category,
    - (ii) in relation to section 28(3), as an individual practitioner of the relevant type.
- (6) Section 57C(1) is subject to subsection (1).

#### **57E Handling complaints**

- (1) Parts 1 and 2 apply in relation to any complaint made about how an approved regulator has dealt with a regulatory complaint as they apply in relation to a handling complaint (relating to a conduct complaint) made about a relevant professional organisation.
- (2) Subsection (1) is subject to such modification to the operation of those Parts as the Scottish Ministers may by regulations make for the purposes of that subsection.

#### **57F Effectiveness of compensation fund**

- (1) Section 39 also applies in relation to a compensation fund of its own that is maintained by an approved regulator in furtherance of section 24(2) of the Legal Services (Scotland) Act 2010.
- (2) For the application of section 39 by virtue of subsection (1)—
  - (a) any such compensation fund is to be regarded as falling within subsection (1)(c) of that section,
  - (b) the approved regulator is to be regarded as the relevant professional organisation.

#### **57G Interpretation of Part 2A**

For the purposes of this Part—

“approved regulator”

“licensed legal services provider” (or “licensed provider”),

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“professional principles”,  
“regulatory objectives”  
“regulatory scheme”  
are to be construed in accordance with Part 2 of the Legal Services (Scotland) Act 2010.”.

### *Registers and lists*

## **82 Register of approved regulators**

- (1) The Scottish Ministers—
  - (a) must keep and publish a register of approved regulators,
  - (b) may do so in such manner as they consider appropriate.
- (2) The register is to include the following information in relation to each approved regulator—
  - (a) its contact details (including its address, website and telephone number),
  - (b) the date on which it was given the relevant approval under section 7,
  - (c) the date on which it was given the relevant authorisation under section 10 (and the duration of that authorisation (unlimited or the fixed period)),
  - (d) the categories of legal services to which that authorisation relates,
  - (e) details of any measure taken by the Scottish Ministers under section 38.

## **83 Registers of licensed providers**

- (1) An approved regulator must keep and publish a register of its licensed legal services providers.
- (2) The register is to include the following information in relation to each licensed provider—
  - (a) its name and any place of business,
  - (b) the relevant details about its licence,
  - (c) the name of every non-solicitor investor in the licensed provider,
  - (d) the name of every person intimated to the approved regulator under paragraph 3 of schedule 8,
  - (e) the names and the dates of appointment of—
    - (i) its Head of Legal Services, and
    - (ii) its Head of Practice or, if applicable, each member of its Practice Committee (including with specific reference to section 53(3)),
  - (f) whether the licensed provider has been the subject of any disciplinary action and (if so) a description of that action.
- (3) In subsection (2)(b), the relevant details about a licensed provider’s licence are—
  - (a) the date on which the licence was originally granted,
  - (b) the date on which it was most recently renewed,
  - (c) whether it is subject to any conditions,
  - (d) the date on which it will expire.
- (4) But, in the case of a former licensed provider, the relevant details are instead—

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- (a) the date on which the licence was originally granted,
  - (b) the period for which the licensed provider held a licence,
  - (c) the reason for the licensed provider ceasing to hold a licence.
- (5) The Scottish Ministers may by regulations—
- (a) make further provision about the information to be contained in the registers of licensed providers, and
  - (b) prescribe the manner in which those registers are to be kept and published.
- (6) In this section, a reference to a licensed provider includes a former licensed provider.

#### **84 Lists of disqualified persons**

- (1) An approved regulator must keep a list of the persons whom it has disqualified under section 56 (that is, from holding a certain position in a licensed legal services provider).
- (2) The list kept under subsection (1) must include the following information in relation to each person concerned—
- (a) the person's name,
  - (b) the—
    - (i) name of any relevant licensed provider,
    - (ii) any relevant position held by the person as at the date of the disqualification,
  - (c) each position from which the person is disqualified,
  - (d) the date of disqualification and its duration (unlimited or the fixed period),
  - (e) the reasons for the disqualification.
- (3) An approved regulator must keep a list of the persons whom it has—
- (a) determined as unfit under section 62 (that is, for being a non-solicitor investor in a licensed provider), or
  - (b) disqualified under section 65(1) (that is, from having an interest in a licensed provider).
- (4) The list kept under subsection (3) must include the following information in relation to each person concerned—
- (a) the person's name,
  - (b) the name of any relevant licensed provider,
  - (c) the date of the determination or (as the case may be) disqualification,
  - (d) the grounds for the determination or (as the case may be) disqualification.
- (5) A list kept under this section must not include information relating to a person in respect of whom the determination or (as the case may be) disqualification—
- (a) has been reversed on appeal, or
  - (b) otherwise, no longer applies.
- (6) The approved regulator must—
- (a) publish the lists kept by it under this section, and
  - (b) notify the Scottish Ministers of any material alterations made to either of them.
- (7) The Scottish Ministers may by regulations—



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- (a) make further provision about the information to be contained in the lists kept under this section,
- (b) prescribe the manner in which those lists are to be kept and published.

### *Miscellaneous*

#### **85 Privileged material**

- (1) Subsection (2) applies to the publication under this Part of any—
  - (a) advice, report or notice, or
  - (b) other material.
- (2) For the purposes of the law on defamation, the publication is privileged.
- (3) But subsection (2) is ineffective if it is proved that the publication was made with malice.

#### **86 Immunity from damages**

- (1) Neither an approved regulator nor any of its officers, members or employees is liable in damages for any act or omission occurring in the exercise (or purported exercise) of its functions under this Part.
- (2) But subsection (1) is ineffective if it is shown that the act or omission was in bad faith.

#### **87 Appeal procedure**

- (1) This section applies in relation to an appeal to the sheriff under this Part.
- (2) The appeal is to be made by way of summary application.
- (3) In the appeal, the sheriff may—
  - (a) uphold, vary or quash the decision that is the subject of the appeal,
  - (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
- (4) The sheriff's determination in the appeal is final.

#### **88 Corporate offences**

- (1) Subsection (2) applies where—
  - (a) an offence under this Part is committed by a relevant organisation, and
  - (b) the commission of the offence—
    - (i) involves the connivance or consent of, or
    - (ii) is attributable to the neglect of,a responsible official of the organisation.
- (2) The official (as well as the organisation) commits the offence.
- (3) For the purpose of this section—
  - (a) a “relevant organisation” is—
    - (i) a company,

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- (ii) a limited liability partnership,
  - (iii) an ordinary partnership, or
  - (iv) any other body or association,
- (b) a “responsible official” is—
- (i) in the case of a company, a director, secretary, manager or other similar officer,
  - (ii) in the case of a limited liability partnership, a member,
  - (iii) in the case of an ordinary partnership, a partner,
  - (iv) in the case of another body or association, a person who is concerned in the management or control of its affairs,
- but in each case also extends to a person purporting to act in such a capacity.

## **89 Effect of professional or other rules**

- (1) Sections 121(5) and 124(3) respectively make provision (in connection with this Part) as to the effect of professional rules to which advocates and solicitors are subject.
- (2) Nothing in this Part affects the operation of any rule which regulates in respect of any matter the professional practice, conduct or discipline of other persons who provide professional services (in particular, as it may relate to their involvement in or with licensed legal services providers).
- (3) This Part is without prejudice to any function of a person or body—
  - (a) arising by virtue of the application of another enactment (or a regulatory rule made under another enactment), and
  - (b) to regulate in any respect the provision of any professional or other services by licensed legal services providers.