



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 3

#### CONFIRMATION AND WILL WRITING SERVICES

#### CHAPTER 1

##### CONFIRMATION SERVICES

##### *Regulation of confirmation agents*

#### **90 Confirmation agents and services**

- (1) For the purposes of this Part, confirmation services are services that are—
  - (a) described in subsection (2), and
  - (b) provided (or offered)—
    - (i) to members of the public, and
    - (ii) for a fee, gain or reward.
- (2) The services are those of drawing or preparing papers on which to found or oppose an application for the confirmation of a person as the executor nominate or dative in relation to the estate of a deceased person.
- (3) It is immaterial for the description in subsection (2) whether or not the services also involve applying to the sheriff on behalf of the person so as to secure the person's confirmation as such (or taking other related action).
- (4) For the purposes of this Part, a confirmation agent is a person on whom, in accordance with an approving body's regulatory scheme, the right to provide confirmation services is conferred.

#### **91 Approving bodies**

- (1) For the purposes of this Chapter, an approving body is a professional or other body which is certified as such by the Scottish Ministers under section 92.



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- (2) That is, following an application to them by the body under subsection (3).
- (3) An application to become an approving body must include—
  - (a) a copy of the applicant’s proposed regulatory scheme (see section 92(1)(b)),
  - (b) a description of—
    - (i) the applicant’s constitution and composition (including internal structure),
    - (ii) its activities.
- (4) The applicant—
  - (a) must provide the Scottish Ministers with such other information as they may reasonably require for their consideration of its application,
  - (b) may withdraw its application at any time by giving them written notice to that effect.
- (5) There is no restriction on the number of approving bodies that may exist at any time.
- (6) The Scottish Ministers may by regulations prescribe fees that they may charge an applicant to become an approving body.

## **92 Certification of bodies**

- (1) The Scottish Ministers may certify the applicant as an approving body if they are satisfied that—
  - (a) the applicant is suitable to be an approving body,
  - (b) the applicant’s proposed regulatory scheme is adequate (as determined with particular reference to section 93).
- (2) The Scottish Ministers may certify the applicant as an approving body—
  - (a) either—
    - (i) without limit of time, or
    - (ii) for a fixed period,
  - (b) with reference to a specified date from which the approving body may exercise its functions in relation to its regulatory scheme,
  - (c) subject to conditions.
- (3) The Scottish Ministers may, after consulting the approving body, vary (including by addition or deletion) any conditions imposed under subsection (2)(c).
- (4) Before deciding whether or not to certify the applicant as an approving body, the Scottish Ministers must consult—
  - (a) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
  - (b) such other person or body as they consider appropriate.
- (5) In consulting under subsection (4), the Scottish Ministers—
  - (a) must send a copy of the application to the OFT,
  - (b) may send—
    - (i) to any other consultee, a copy of the application,
    - (ii) to the OFT or any other consultee, a copy of any revised application.
- (6) The Scottish Ministers must, with reasons, notify the applicant if they intend to—



- (a) refuse to certify it as an approving body, or
  - (b) certify it as such subject to conditions.
- (7) If notification is given to the applicant under subsection (6), 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.
- (8) The Scottish Ministers may by regulations make further provision about certification under this section, including (in particular)—
  - (a) the process for seeking their certification,
  - (b) in relation to capability to act as an approving body, the criteria for their certification (including things that applicants must be able to demonstrate).

## **93 Regulatory schemes**

- (1) An approving body must—
  - (a) make a regulatory scheme for—
    - (i) conferring on any of the individual persons within its membership the right to provide confirmation services, and
    - (ii) regulating the provision of confirmation services by the persons on whom (in accordance with the scheme) that right is conferred, and
  - (b) apply the scheme in relation to them.
- (2) The regulatory scheme is to—
  - (a) describe the training requirements to be met by a prospective confirmation agent,
  - (b) incorporate a code of practice to which a confirmation agent is subject,
  - (c) require that a confirmation agent keep in place sufficient arrangements for professional indemnity,
  - (d) include rules about—
    - (i) the making and handling of any complaint about a confirmation agent,
    - (ii) the measures that may be taken by the approving body, in relation to a confirmation agent, if a conduct complaint (as construed by reference to section 2(1)(a) of the 2007 Act (and as if the confirmation agent were a practitioner to whom that section relates)) about the confirmation agent is upheld,
  - (e) allow a confirmation agent to make representations to the approving body before it takes any of the measures available to it by virtue of paragraph (d)(ii),
  - (f) cover such other regulatory matters as the Scottish Ministers may by regulations specify (and in such manner as they may so specify).
- (3) The code of practice mentioned in subsection (2)(b) must—
  - (a) set out the standards to be met by confirmation agents,
  - (b) make such further arrangements as to the professional practice, conduct or discipline of confirmation agents for which provision is (in the approving body's opinion) necessary or expedient,
  - (c) allow for—



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- (i) the rescission or suspension of, or attaching of conditions to the exercise of, the right of a confirmation agent to provide confirmation services if the agent contravenes the code of practice,
  - (ii) the suspension of that right of a confirmation agent if a complaint, suggesting that the agent is guilty of professional misconduct in relation to the provision of confirmation services, is made about the agent.
- (4) A confirmation agent may appeal against a decision taken under the regulatory scheme to rescind or suspend, or attach conditions to the exercise of, the agent's right to provide confirmation services—
  - (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which that decision is intimated to the agent.
- (5) An approving body must, so far as practicable when exercising its functions under this Chapter, observe the regulatory objectives.

#### **94 Financial sanctions**

- (1) Rules included in a regulatory scheme in pursuance of section 93(2)(d)(ii) may provide for the imposition of a financial penalty.
- (2) A financial penalty provided for by virtue of subsection (1) must not exceed the maximum amount permitted by the Scottish Ministers when giving their certification under section 92.
- (3) A financial penalty imposed by virtue of this section is payable to the Scottish Ministers (but the approving body may collect it on their behalf).
- (4) A confirmation agent may appeal against a financial penalty (or the amount of a financial penalty) imposed on the agent by virtue of this section—
  - (a) to the sheriff,
  - (b) within the period of 3 months beginning with the date on which the penalty is intimated to the agent.
- (5) Where an appeal is made under subsection (4), no part of the penalty requires to be paid before the appeal is determined or withdrawn.

#### **95 Review of own performance**

- (1) An approving body must review annually its performance.
- (2) In particular, a review is to cover the following matters—
  - (a) the approving body's compliance with section 93(5),
  - (b) the exercise of its functions in relation to its regulatory scheme,
  - (c) its compliance with any measures applying to it by virtue of section 100(3).
- (3) The approving body must send a report on the review to the Scottish Ministers.
- (4) The report must contain a copy of the approving body's annual accounts (but only so far as they are relevant in connection with its functions under this Chapter).
- (5) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.



- (6) The Scottish Ministers may by regulations make further provision about—
- (a) the review of approved bodies' performance,
  - (b) reports on reviews of their performance.

## **96 Pretending to be authorised**

- (1) A person commits an offence if the person—
- (a) pretends to be a confirmation agent (or otherwise pretends to have the right to provide confirmation services under this Part), or
  - (b) takes or uses any name, title, addition or description implying falsely that the person is a confirmation agent (or otherwise so implying that the person has the right to provide confirmation services under this Part).
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Other regulatory matters*

## **97 Revocation of certification**

- (1) Subsection (2) applies where the Scottish Ministers are satisfied that an approving body has failed to comply with a direction under section 100(3).
- (2) The Scottish Ministers may—
- (a) revoke the certification given to the approving body under section 92,
  - (b) require the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient in connection with the revocation.
- (3) The revocation under subsection (2) of the certification of an approving body has the effect, from the date on which the revocation becomes effective, of rescinding the right of each of its confirmation agents to provide confirmation services (so far as that right is conferred by the approving body in question).

## **98 Surrender of certification**

- (1) An approving body may, with the prior agreement of the Scottish Ministers, surrender the certification given to it under section 92.
- (2) The approving body must—
- (a) take all reasonable steps to mitigate such disruption to the clients of its confirmation agents as is likely to result from the surrender,
  - (b) in particular, take steps for ensuring that any relevant work is—
    - (i) completed, or
    - (ii) taken over by a suitably qualified person,before the date from which subsection (5) is operative.
- (3) The Scottish Ministers may direct the approving body to take specified action (or refrain from doing something) if they consider that to be necessary or expedient—
- (a) for the purpose of subsection (2), or
  - (b) otherwise in connection with the surrender.



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- (4) Before the Scottish Ministers may agree to the surrender, they must be satisfied that the approving body has complied (or will comply) with—
  - (a) subsection (2), and
  - (b) any directions given to it under subsection (3).
- (5) The surrender of an approving body's certification under subsection (1) has, from the date on which the surrender becomes effective, the effect of extinguishing the right of each of its confirmation agents to provide confirmation services (so far as that right is conferred by the approving body in question).

## **99 Register and list**

- (1) The Scottish Ministers—
  - (a) must keep and publish a register of approving bodies,
  - (b) may do so in a such manner as they consider appropriate.
- (2) The register is to include the following information in relation to each approving body—
  - (a) its contact details (including its address, website and telephone number),
  - (b) the date on which it was given the relevant certification under section 92.
- (3) An approving body must—
  - (a) keep a list of its confirmation agents,
  - (b) give the Scottish Ministers a copy of the list whenever they request it.
- (4) An approving body must give the Scottish Ministers such information about its confirmation agents as the Scottish Ministers may reasonably request.

### *Ministerial functions*

## **100 Ministerial intervention**

- (1) An approving body must—
  - (a) provide such information about its performance in relation to its regulatory scheme as the Scottish Ministers may reasonably request,
  - (b) do so within 21 days beginning with the date of the request (or such longer period as the Scottish Ministers may allow).
- (2) An approving body—
  - (a) if directed to do so by the Scottish Ministers, must—
    - (i) review its regulatory scheme (or any relevant part of it), and
    - (ii) report to them its findings and (if appropriate) inform them of any proposed amendment to the scheme,
  - (b) may amend its regulatory scheme so as to give effect to the proposed amendment, but—
    - (i) any material amendment is invalid unless it has the prior approval of the Scottish Ministers,
    - (ii) the Scottish Ministers may not give their approval before they have consulted such person or body as they consider appropriate.
- (3) The Scottish Ministers may—



- (a) if, after consulting such person or body as they consider appropriate, they consider that an approving body's regulatory scheme is not (or is no longer) adequate, direct the approving body to amend the regulatory scheme in such manner as they may specify,
  - (b) if they are satisfied that an approving body has not complied with a requirement imposed on it by or under this Chapter, direct the approving body to take specified remedial action (or refrain from doing something).
- (4) An approving body must—
  - (a) review annually the performance of its confirmation agents,
  - (b) prepare a report on the review,
  - (c) send a copy of the report to the Scottish Ministers.
- (5) The Scottish Ministers may by regulations make further provision—
  - (a) about the review of confirmation agents,
  - (b) so far as it appears to them to be necessary for safeguarding the interests of clients of confirmation agents—
    - (i) concerning the functions of approving bodies,
    - (ii) relating to confirmation agents.