



Legal Services (Scotland) Act 2010

2010 asp 16

PART 4

THE LEGAL PROFESSION

CHAPTER 3

SOLICITORS AND OTHER REPRESENTATIVES

The Law Society

131 Acting as approved regulator

After section 1 of the 1980 Act insert—

“1A Power to act as statutory regulator

The Society may—

- (a) act as an approved regulator within the meaning of Part 2 of the 2010 Act,
- (b) do anything that is necessary or expedient for the purposes of doing so.”

132 Council membership

- (1) In section 3 (establishment and functions of Council of Law Society) of the 1980 Act, in subsection (1), after “elected” insert “, co-opted or appointed”.
- (2) In Schedule 1 to the 1980 Act—
 - (a) in paragraph 2 (the Council’s scheme)—
 - (i) in head (a), the word “, election,” is repealed,
 - (ii) after head (a) insert—
 - “(aa) election, co-option and appointment to the Council;”,
 - (b) in paragraph 3 (detail of the scheme), after head (b) insert—
 - “(bza) shall make provision for—

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- (i) the election or co-option of solicitor members to the Council,
- (ii) the appointment of non-solicitor members to the Council;”
- (c) after paragraph 3 insert—
 - “3A (1) This paragraph applies for the purpose of paragraph 3(bza).
 - (2) Persons are electable, or eligible to be co-opted, as solicitor members if they are members of the Society.
 - (3) Persons are appointable as non-solicitor members if they appear to the Council—
 - (a) to be qualified to represent the interests of the public in relation to the provision of legal services in Scotland, or
 - (b) having regard to the Society’s functions, to be suitable in other respects.”.

133 Regulatory committee

- (1) In section 3A (discharge of functions of Council of the Law Society) of the 1980 Act, in subsection (11), for “is” substitute “is—
 - (a) subject to sections 3B to 3G, and
 - (b)”.
- (2) After section 3A of the 1980 Act insert—

“3B Regulatory committee

- (1) The Council must, for the purpose mentioned in subsection (2)—
 - (a) arrange under section 3A(1)(a) for their regulatory functions to be exercised on their behalf by a regulatory committee, and
 - (b) ensure that the committee continues so to exercise those functions (in particular, for the discharge of the Council’s responsibility as mentioned in section 3A(9)(a)).
- (2) The purpose is of ensuring that the Council’s regulatory functions are exercised—
 - (a) independently of any other person or interest,
 - (b) properly in other respects (in particular, with a view to achieving public confidence).
- (3) Accordingly, the Council must not—
 - (a) exercise their regulatory functions through any other means, or
 - (b) interfere unduly in the regulatory committee’s business.
- (4) Subsection (3)(a) is subject to—
 - (a) any determination made by the regulatory committee in a particular case that it is necessary, for ensuring that something falling within the Council’s regulatory functions is achieved appropriately, that specific action be taken otherwise than through the regulatory committee, and

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- (b) such directions as the regulatory committee gives the Council (acting in any other capacity) in connection with the determination.

3C Particular rules applying

- (1) The following particular rules apply as respects the regulatory committee—
 - (a) the committee’s membership may include persons who are not members of the Council,
 - (b) at least 50% of the committee’s membership is to comprise lay persons,
 - (c) lay persons, where they are not members of the Council, are appointable to the committee if they would be appointable to the Council as non-solicitor members (see paragraph 3A(3) of Schedule 1),
 - (d) the committee is to appoint one of its lay members as its convener,
 - (e) if the convener is not present at a meeting of the committee, another of its lay members is to chair the meeting.
- (2) Any sub-committee of the regulatory committee (formed under section 3A(2))
 - (a) is subject to the particular rules applying as respects the regulatory committee, except that—
 - (a) a meeting of the sub-committee need not be chaired by one of its lay members,
 - (b) it may co-opt members from outside the membership of the regulatory committee.
- (3) Nothing done by the regulatory committee (or a sub-committee of it) is invalid solely because of a temporary shortfall in the number of its lay members.
- (4) In subsection (1)(b), “lay persons” are persons who are not—
 - (a) solicitors,
 - (b) advocates,
 - (c) conveyancing or executry practitioners as defined in section 23 of the 1990 Act,
 - (d) those having a right to conduct litigation, or a right of audience, by virtue of section 27 of the 1990 Act, or
 - (e) confirmation agents or will writers within the meaning of Part 3 of the 2010 Act.

3D Resolving regulatory disputes

- (1) This section applies in relation to any dispute arising between the regulatory committee and the Council (acting in any other capacity) with respect to the application of section 3B.
- (2) If the dispute cannot be settled by the parties, it is to be submitted to (and resolved by) arbitration.
- (3) The arbitrator is to be appointed—
 - (a) jointly by the parties, or
 - (b) in the absence of agreement for joint appointment, by the Lord President on a request made by either (or both) of them.

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- (4) The arbitrator’s resolution of the dispute is final and binding on the parties.

3E Further provision for section 3B etc.

- (1) The Scottish Ministers may by regulations—
- (a) prescribe a maximum—
 - (i) number of members that the regulatory committee, or any sub-committee of it, may have,
 - (ii) proportion of the membership (of either) that may comprise co-opted members,
 - (b) make further provision about the Council’s regulatory functions if they believe that such provision is necessary for ensuring that those functions are exercised in accordance with the purpose stated in section 3B(2),
 - (c) modify (by elaboration or exception) the definition in sections 3F and 3G if they believe that such modification is appropriate.
- (2) Before making regulations under subsection (1), the Scottish Ministers must consult the Council (and take account of sections 4 and 5 of the 2010 Act).
- (3) The power to make regulations under subsection (1) is exercisable by statutory instrument; but—
- (a) a statutory instrument containing regulations under subsection (1)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament,
 - (b) a statutory instrument containing regulations under subsection (1)(b) or (c) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Parliament.

3F Meaning of “regulatory functions”

- (1) For the purposes of sections 3B to 3E, the Council’s “regulatory functions” are their functions of regulating in respect of any matter the professional practice, conduct and discipline of—
- (a) solicitors (including firms of solicitors) and incorporated practices,
 - (b) other legal practitioners, for example—
 - (i) registered European or foreign lawyers,
 - (ii) conveyancing or executry practitioners.
- (2) Those functions include (in particular) their functions as to—
- (a) setting standards of qualification, education and training,
 - (b) admission of persons to the profession,
 - (c) keeping the roll and other registers,
 - (d) administering the Guarantee Fund,
 - (e) making regulatory rules under any relevant enactment.
- (3) In subsection (1)(b)(ii), the reference to conveyancing or executry practitioners is to be construed in accordance with section 23 of the 1990 Act.

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3G Extended meaning under section 3F

If the Society acts as an approved regulator as mentioned in section 1A, the Council’s “regulatory functions” for the purposes of sections 3B to 3E also comprise such regulatory functions as—

- (a) fall within the meaning of that expression as given for the purposes of Part 2 of the 2010 Act (by section 30(1) of that Act), and
- (b) are exercisable under that Part of that Act by the Society in its capacity as an approved regulator as so mentioned.”.

- (3) In section 65(1) of the 1980 Act, at the appropriate alphabetical place insert—
““regulatory committee” means the regulatory committee formed in accordance with section 3B(1);”.