

Status: Point in time view as at 01/04/2011.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, SCHEDULE 2. (See end of Document for details)

SCHEDULE 2

(introduced by section 38(3))

DIRECTIONS

Application

- 1 This schedule applies where the Scottish Ministers are satisfied that—
- (a) an act or omission of an approved regulator (or a series of acts or omissions) has had, or is likely to have, an adverse impact on the observance of any of the regulatory objectives,
 - (b) an approved regulator has failed to comply with a requirement imposed on it by or under this Act (including a direction imposed in accordance with this schedule),
 - (c) an approved regulator has failed to adhere to its internal governance arrangements (including, in particular, those relating to the independent and effective exercise of its regulatory functions), or
 - (d) an approved regulator has made a material amendment to its regulatory scheme under section 12(4).

Commencement Information

11 Sch. 2 para. 1 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

Power to direct

- 2 (1) The Scottish Ministers may direct the approved regulator to take—
- (a) in a case falling within paragraph 1(a), such action as they consider will counter the adverse impact, mitigate its effect or prevent its recurrence,
 - (b) in a case falling within paragraph 1(b) or (c), such action as they consider will remedy the failure, mitigate its effect or prevent its recurrence,
 - (c) in a case falling within paragraph 1(d), such action as they consider necessary or expedient in relation to such transitional matters as may arise from the amendment.
- (2) A direction under sub-paragraph (1) may require the approved regulator to modify any part of its regulatory scheme.
- (3) A direction under sub-paragraph (1) must not be framed by reference to—
- (a) a specific disciplinary case, or
 - (b) other specific regulatory proceedings.
- (4) A direction under sub-paragraph (1) may require the approved regulator to refrain from doing something.
- (5) The approved regulator must (so far as practicable) comply with a direction given to it in accordance with this schedule.

Commencement Information

12 Sch. 2 para. 2 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

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Notice of intention

- 3 (1) Before giving a direction to an approved regulator under this schedule, the Scottish Ministers must give it a notice (a “notice of intention”) of their intention to do so.
- (2) The notice of intention must—
- (a) state that the Scottish Ministers intend to give a direction,
 - (b) indicate the terms of the proposed direction (including the date by which it would have to be complied with),
 - (c) explain why the Scottish Ministers are satisfied as mentioned in paragraph 1.

Commencement Information

I3 Sch. 2 para. 3 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

Consultation

- 4 (1) The approved regulator has 28 days beginning with the date of receipt of the notice of intention (or such longer period as the approved regulator and the Scottish Ministers may agree) to make representations to the Scottish Ministers about the proposed direction.
- (2) The Scottish Ministers must—
- (a) publish the notice of intention in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body,
 - (b) give a copy of the notice of intention to such person or body as they consider appropriate,
 - (c) after the expiry of the period for representations—
 - (i) give the recipients under paragraph (b) a copy of any representations received from the approved regulator,
 - (ii) consult them accordingly in relation to the appropriateness of giving the direction.
- (3) Where the Scottish Ministers consider that the proposed direction may have the effect of preventing competition within the legal services market, or significantly restricting or distorting such competition, they must (additionally)—
- (a) send to the OFT—
 - (i) a copy of the notice of intention,
 - (ii) a copy of any representations received from the approved regulator,
 - (b) consult the OFT accordingly.

Commencement Information

I4 Sch. 2 para. 4 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

Decision

- 5 (1) The Scottish Ministers must have regard to any representations made to them by the approved regulator, or any consultee under paragraph 4(2)(c) or (3), when deciding whether to proceed with giving a direction.

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- (2) The Scottish Ministers must—
- (a) send to the approved regulator a notice (a “decision notice”) of their decision,
 - (b) notify the consultees under paragraph 4(2)(c) and (3) of their decision,
 - (c) publish the decision notice in such manner as they consider most appropriate for bringing it to the attention of any relevant person or body.
- (3) If the Scottish Ministers decide to give the direction, the decision notice must contain the direction.
- (4) For the purposes of this schedule, relevant persons or bodies include—
- (a) other approved regulators,
 - (b) providers of legal services,
 - (c) organisations representing the interests of consumers,
 - (d) members of the public.

Commencement Information

I5 Sch. 2 para. 5 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

Extension of time to comply

- 6 (1) The Scottish Ministers may, on an application by an approved regulator made at any time after the giving of a direction, allow an approved regulator additional time to comply with the direction.
- (2) Where such additional time is allowed, the Scottish Ministers must publicise that fact in such manner as they consider most likely to bring it to the attention of any relevant person or body.

Commencement Information

I6 Sch. 2 para. 6 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

Enforcement

- 7 (1) If at any time it appears to the Scottish Ministers that an approved regulator has failed to comply with a direction given under this schedule, they may make an application to the Court of Session for an order as described in sub-paragraph (2).
- (2) On an application under sub-paragraph (1), the Court may (if it decides that the approved regulator has failed to comply with the direction) order the approved regulator to take such steps as the Court thinks fit for securing that the direction is complied with.

Commencement Information

I7 Sch. 2 para. 7 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

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