



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 2

#### REGULATION OF LICENSED LEGAL SERVICES

### CHAPTER 1

#### APPROVED REGULATORS

##### *Internal governance*

#### **27 Internal governance arrangements**

- (1) The internal governance arrangements of an approved regulator must incorporate such provision as is necessary with a view to ensuring that the approved regulator will—
  - (a) always exercise its regulatory functions—
    - (i) independently of any other person or interest,
    - (ii) properly in other respects (in particular, with a view to achieving public confidence),
  - (b) continue to allocate sufficient resources (financial and otherwise) to the exercise of its regulatory functions,
  - (c) review regularly how effectively it is exercising its regulatory functions (in particular, by reviewing the effectiveness of its regulatory scheme).
- (2) In relation to an approved regulator which has representative functions, relevant factors in connection with subsection (1)(a) include (in particular) the need for—
  - (a) the approved regulator's code of conduct (if any) for its members to be compatible with the regulatory objectives and the professional principles,
  - (b) the approved regulator to—
    - (i) exercise its regulatory functions separately from its other functions (in particular, any representative functions), and
    - (ii) avoid conflicts of interest in relation to its regulatory functions,

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*Status: This is the original version (as it was originally enacted).*

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- (c) the approved regulator to secure that a reasonable proportion of the individuals who are responsible for the exercise of its regulatory functions are not qualified legal practitioners.
- (3) The approved regulator's regard to the factor mentioned in subsection (2)(b) is demonstrable by (for example) its securing that within its structure its regulatory functions are clearly demarcated.

## **28 Communicating outside**

- (1) The internal governance arrangements of an approved regulator must not, in relation to the persons who are involved in the exercise of its regulatory functions, prevent the persons from engaging in consultation or other communication with—
- (a) other approved regulators,
  - (b) the Scottish Ministers,
  - (c) the Scottish Legal Aid Board,
  - (d) the Scottish Legal Complaints Commission, or
  - (e) the OFT, or any other public body which has functions concerning the application of competition law.
- (2) Where an approved regulator has representative functions, its internal governance arrangements must not, in relation to any person who—
- (a) is involved in the exercise of its regulatory functions, and
  - (b) considers that the independence or effectiveness of the approved regulator's exercise of its regulatory functions is being (or has been) for any reason adversely affected by the furtherance of its representative functions,
- prevent the person from notifying the Scottish Ministers accordingly.
- (3) Subsections (1) and (2) are subject to any overriding prohibition or restriction arising by virtue of any relevant—
- (a) enactment or rule of law, or
  - (b) rule of professional conduct or ethics.

## **29 More about governance**

- (1) The Scottish Ministers may by regulations make further provision about the internal governance arrangements of approved regulators.
- (2) However, regulations under subsection (1) must relate to the regulatory functions of approved regulators.
- (3) Before making regulations under subsection (1), the Scottish Ministers must—
- (a) have the Lord President's agreement, and
  - (b) consult any approved regulator that would be affected by the regulations.
- (4) For the purposes of this Part, the internal governance arrangements of an approved regulator are its own organisational and operational arrangements for the carrying out of its activities.