

POLICY NOTE

THE LICENSED LEGAL SERVICES (COMPLAINTS ABOUT APPROVED REGULATORS) (SCOTLAND) REGULATIONS 2018

SSI 2018/341

The Scottish Ministers make the regulations above in exercise of the powers conferred by section 79(8) of the Legal Services (Scotland) Act 2010 and all other powers enabling them to do so. In accordance with section 5(2) of that Act, the Scottish Ministers consulted with such persons or bodies that appear to them to have a significant interest the subject matter to which the exercise of the function relates. The Scottish Statutory Instrument is subject to negative procedure

Purpose

The purpose of this instrument is to create a regulatory framework for the investigation of a complaint about an approved regulator of licensed legal service providers.

Section 79 of the Legal Services (Scotland) Act 2010 Act (the 2010 Act) outlines the process for making complaints about an approved regulator. It also contains a power to make further provision by regulations. The Licensed Legal Services (Complaints About Approved Regulators) (Scotland) Regulations 2018 make further provision setting out the statutory requirements for:

- Investigation of multiple complaints about an approved regulator;
- Interim report arrangements
- Obtaining information, documents and explanation from an approved regulator.

The process for dealing with complaints about how an approved regulator has dealt with a regulatory complaint about a licensed legal service provider are set out in Parts 1 and 2 of the Legal Profession and Legal Aid (Scotland) Act 2007.

A **guidance document**, which sits alongside these Regulations, sets out the role of the Scottish Ministers in the handling of complaints about approved regulators. Under section 79, the Scottish Ministers have a function of investigating a complaint and, thereafter, notifying the complainer and the approved regulator of the outcome. Section 79(7) gives the Scottish Ministers the discretion to delegate the function to the Scottish Legal Complaints Commission (the Commission). Where the function has been delegated, regulation 3 of the Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012 (SSI 2012/153) provides that the Commission must notify the Scottish Ministers if it decides to uphold a complaint.

The Scottish Ministers intend to write to the Commission formally **delegating** their functions of investigating a complaint and notifying the complainer and approved regulator of the outcome. In addition, the delegation will waive the requirement on the Commission to refer a complaint to the Scottish Ministers.

Policy Objective: Alternate Business Structures for Legal Services

The 2010 Act removes restrictions which previously prevented solicitors entering into business relationships with non-solicitors, allowing both investment by non-solicitors and external ownership. Solicitors and/or other regulated professionals i.e. non-solicitor professionals such as accountants will require to hold at least a 51% majority stake in the business.

It is anticipated that the introduction of alternative business structures to the legal services market will provide clients with a wider access to legal services and they will be able to expect the same standards of service, advice and consumer protection

The 2010 Act creates a tiered regulatory framework for the new business entities, licenced legal service providers, which provide legal services for a fee, gain or reward under a licence issued by an approved regulatory. This framework will operate as follows:

1. Scottish Ministers will authorise, approve and monitor approved regulators.
2. Approved regulators will in turn license and regulate licensed legal service providers.
3. A licensed legal service provider will have obligations to manage and oversee people in the entity – including lawyers, other professionals and non-professionals – in a way which is compatible with the regulatory regime imposed by the approved regulator.

Under the 2010 Act, a professional or other body can become an approved regulator by a two-stage process. The first stage is to obtain approval and the second to obtain authorisation both by application to the Scottish Ministers. If an application for approval is granted, then this means that the body can now call itself an approved regulator. It is only after successfully being granted an application for authorisation that the approved regulator can regulate its licensed legal service providers.

As part of the approval process, the approved regulator must make and implement a regulatory scheme for its licensed legal service providers. This must include details about three sets of rules:

1. Licensing rules: relating to the application process and the issuing or renewal of licences.
2. Practice rules: governing how licensed legal service providers operate.
3. Compensation rules: governing the arrangements for compensating the clients of licensed providers for financial loss resulting from the dishonesty of the licensed legal service provider or someone in it.

Consultation

In accordance with section 5 of the 2010 Act, a consultation in relation to complaints handling process took place between June and August 2018 with interested parties. There were 3 responses to this consultation. The responses favoured the introduction of the process and made some helpful suggestions for strengthening the complaints process. We have listened to the views put forward by the respondents and subsequently made further revisions to Guidance on complaints handling against an approved regulator. A copy of the responses to the consultation has been published on the Scottish Government website.

Impact Assessments

An equality impact assessment was discussed with the Law Society and the SLCC and given there was unanimous agreement that there are no equality impact issues.

Financial Effects

A Partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

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