

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 1 – Approved Regulators

Approved regulators

Section 6 – Approved regulators

21. This section sets out how a professional or other body can become an approved regulator. This is framed as a two-stage process – the first stage is to obtain approval and the second to obtain authorisation. Essentially this is by application to the Scottish Ministers and this section details what information an application must include. 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 providers. No more than three approved regulators may exist at any one time, though this number may be amended by regulations made by the Scottish Ministers with the agreement of the Lord President.
22. Subsection (6) gives the Scottish Ministers a regulation making power to prescribe fees they can charge. This could allow a charge for each application or an annual regulatory charge or both.

Section 7 – Approval of regulators

23. *Section 7* provides the criteria in relation to which the Scottish Ministers must be satisfied before approving an applicant as an approved regulator. These include, among others, that the applicant:
 - has the necessary expertise as regards the provision of legal services;
 - has a thorough understanding of the application of the regulatory objectives and professional principles; and
 - is adequately resourced.
24. The Scottish Ministers must also be satisfied that the applicant would always exercise its regulatory functions independently of any other person or interest and otherwise properly, that the applicant's regulatory scheme is adequate (with reference to section 12) and that its internal governance arrangements (how it is structured and managed) are suitable (with reference to section 27). The Scottish Ministers must have the consent of the Lord President before approving a body.
25. The Scottish Ministers can approve a body as an approved regulator subject to conditions. Conditions may, for example, restrict an approving body to regulating a particular type of licensed provider, and can be imposed indefinitely or for a period

of at least 3 years. The Scottish Ministers may vary any restrictions or conditions following consultation with the approved regulator. This includes adding or deleting any conditions or restrictions.

26. The Scottish Ministers have the power to make regulations regarding the approval of approved regulators, including in relation to the application process and the approval criteria. Regulations about the approval criteria must relate to the capability of applicants to act as approved regulators.
27. The Scottish Ministers are required to consult the OFT and any other person or body that they consider appropriate before approving an applicant as an approved regulator.

Section 8 – Pre-approval consideration

28. Before deciding to approve an applicant as an approved regulator, the Scottish Ministers must consult the Lord President, the OFT, other appropriate consumer organisations, and any other bodies and persons as they consider appropriate.
29. Where the Scottish Ministers indicate that an application might not be approved, or if conditions are attached, the applicant can make representations within a 28-day period or take such other steps as it considers necessary (for example, by modifying its application or scheme).

Section 9 – Lord President’s agreement

30. The Scottish Ministers must have the agreement of the Lord President before approving a body as an approved regulator, or imposing or varying any conditions or restrictions. The Scottish Ministers must also impose conditions about the expertise relating to the provision of legal services as are reasonably sought by the Lord President.

Section 10 – Authorisation to act

31. Authorisation is the second stage of the process. Having been approved by the Scottish Ministers as an approved regulator, the body may not exercise any of its regulatory functions unless authorised so to do by the Scottish Ministers (subsection (1)). The section also makes provision in relation to the restrictions and conditions that may be placed on authorisation.
32. Subsection (2) provides that the Scottish Ministers can only give their authorisation if they are satisfied or continue to be satisfied as to the matters mentioned in section 7(1) and that it continues to meet any criteria provided for in regulations made under section 7(5)(b).
33. Authorisation may be with or without conditions, may be subject to a time limitation and may also be restricted to particular types of legal services or legal service provider. A restriction in relation to a particular type of legal services may be appropriate where an approved regulator has expertise in a specialised area. One example is a body which regulates accountants which might seek to regulate mixed practices of accountants and lawyers, but not other forms of multi-disciplinary practice. The Scottish Ministers may vary by addition or deletion any restrictions and conditions following consultation with the approved regulator.
34. The Scottish Ministers have the power to make regulations regarding the authorisation process. This power could be used to set out the process for authorisation in more detail, and to address any issues which arise with regard to the criteria used.

Section 11 – Request for authorisation

35. This section allows requests for authorisation to be made at any reasonable time and to be withdrawn. It requires the Scottish Ministers to notify the applicant and to give reasons if they intend to withhold authorisation or impose conditions. If such

*These notes relate to the Legal Services (Scotland) Act 2010
(asp 16) which received Royal Assent on 9 November 2010*

notification is given, the applicant, or the approved regulator, may within 28 days make representations and take any other steps it considers expedient. There is a duty on the approved regulator or applicant to provide the Scottish Ministers with any information they reasonably require.