

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 2 – Licensed Legal Services Providers

Licensed providers

Section 48 – Eligibility criteria

Section 49 – Majority ownership

103. These sections describe some possible models of licensed provider and give details of what criteria make and do not make an entity eligible to be a licensed provider.
104. Licensed providers need not have any particular business structure and need not be a body corporate, but they must be a recognisable business entity (such as a company). It is possible that a business which is involved in matters with no link to legal services might in future have a stake in a licensed provider. In such a situation, subsection (3)(b) requires that there should be a distinct business entity within that organisation which operates as the licensed provider. This will prevent approved regulators from having to regulate matters which are not related to the broad definition of legal services in section 3.
105. The definition of licensed provider excludes existing forms of legal business structures. These will continue to be regulated as now (primarily by the Society and the Faculty). The existing “traditional” forms of business structure for solicitors are set out in section 48(4).
106. The first is a solicitor operating as, in effect, a sole trader (sometimes known as a sole practitioner).
107. The second, the traditional practice, means either a partnership made up entirely of solicitors, or an “incorporated practice”. An incorporated practice is a form of solicitors’ practice with no non-solicitor ownership or control, which trades as a body corporate, and which may benefit from limited liability. Such practices are governed by the Solicitors (Scotland) (Incorporated Practices) Practice Rules 2001.
108. The third, law centres, are also already provided for in the 1980 Act. Section 65 of the 1980 Act defines “law centre” as “a body (a) established for the purposes of providing legal services to the public generally as well as to individual members of the public, and (b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre”. Such law centres typically have an arrangement with a solicitors’ firm which provides the legal services for the centre. Section 26(2) of the 1980 Act provides that the offence of acting as agents for unqualified persons does not apply to solicitors, registered foreign lawyer or registered European lawyer pursuing professional activities within the meaning of the European

Communities (Lawyer's Practice) (Scotland) Regulations 2000 who are employed full-time on a fixed salary by a body corporate or employed by a law centre.

109. The Scottish Ministers have the power to make regulations about eligibility to be a licensed provider (subsection (6)). Those regulations may specify other types of entity that are or are not eligible to become licensed providers and make further provision about the criteria for eligibility to be a licensed provider. This subsection also gives the Scottish Ministers power to modify by regulations section 47(2) which currently requires an entity to include at least one solicitor in order to be eligible to be a licensed provider, so that in future it may be possible for a licensed provider to be eligible if it includes a different type of practitioner. Scottish Ministers also have the power to modify the list of legal practitioners in subsection (5). This power could be used to add any types of legal practitioner which are created in the future, thus keeping the provision up to date.
110. [Section 49](#) provides that an entity is only eligible to be a licensed provider if it is at least 51% owned, managed or controlled by solicitors, firms of solicitors or incorporated practices or members of other regulated professions. It should be noted that section 147 provides that this percentage may be amended or section 49 may be repealed. In either case, the Scottish Ministers must have the agreement of the Lord President before making the necessary regulations. Such an entity must also have at least one solicitor in possession of a practising certificate free of conditions. An entity is not eligible to become a licensed provider if it is wholly owned, managed or controlled by solicitors, firms of solicitors or incorporated practices.
111. [Section 49\(3\)](#) defines "regulated profession". Subsection (4) requires the Scottish Ministers to make regulations specifying what is or what is not to be regarded as a "regulated profession" and allows them to make regulations about what is or what is not a professional association, professional activities (or qualifications) or membership of a profession. Before making such regulations, the Scottish Ministers must have the agreement of the Lord President and must also consult the Society, every approved regulator, the OFT and other organisations appearing to them to represent the interests of consumers, and any other persons and bodies they consider appropriate.