



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 2

#### REGULATION OF LICENSED LEGAL SERVICES

### CHAPTER 2

#### LICENSED LEGAL SERVICES PROVIDERS

##### *Discontinuance of services*

VALID FROM 02/07/2012

#### **68 Duty to warn**

- (1) Subsection (2) applies where a licensed legal services provider—
- (a) is in serious financial difficulty, or
  - (b) for any reason (except revocation or suspension of its licence under this Part) —
    - (i) intends to stop providing legal services, or
    - (ii) is likely to become unable to continue providing legal services.
- (2) The licensed provider must—
- (a) notify (without delay) its approved regulator accordingly,
  - (b) provide the approved regulator with such relevant information as the approved regulator may require,
  - (c) take all reasonable steps to mitigate such disruption to its clients as is likely to result from the difficulty or (as the case may be) its ceasing to provide legal services.

*Status: Point in time view as at 01/04/2011. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Cross Heading: Discontinuance of services. (See end of Document for details)*

VALID FROM 02/07/2012

## 69 Inability to operate

- (1) Subsections (2) to (7) apply where—
  - (a) through the application of section 48 or 49 or otherwise, a licensed provider is no longer eligible to remain as such,
  - (b) because of a vacancy within a licensed provider, the licensed provider has within it no person who is eligible to be (or act as) its—
    - (i) Head of Legal Services, or
    - (ii) Head of Practice,
  - (c) in respect of a licensed provider—
    - (i) a provisional liquidator, liquidator, receiver or judicial factor is appointed,
    - (ii) an administration or winding up order is made,
    - (iii) a resolution is passed by it for its voluntary winding up (except where that resolution is solely to facilitate reconstruction or amalgamation with another licensed provider), or
  - (d) for some other reason (except revocation or suspension of its licence under this Part), a licensed provider stops providing legal services.
- (2) The licensed provider must—
  - (a) notify (without delay and no later than 7 days after the event referred to in subsection (1)) its approved regulator accordingly,
  - (b) provide the approved regulator with such information about the situation as the approved regulator may require.
- (3) The approved regulator must revoke the licensed provider's licence except where the approved regulator is satisfied that—
  - (a) the situation is temporary, and
  - (b) there are sufficient arrangements in place to safeguard the interests of the licensed provider's clients until such time as the situation is rectified.
- (4) Even if the exception mentioned in subsection (3) is made out, the approved regulator may suspend the licence pending rectification of the situation.
- (5) For the purpose of subsections (3) and (4), the approved regulator must review the situation every 14 days (or, if it so chooses, more frequently).
- (6) For so long as the licensed provider's licence is not revoked or suspended under subsection (3) or (4) in connection with the situation, the situation alone does not prevent the licensed provider from continuing (or recommencing) to provide legal services.
- (7) Where a licensed provider has ceased to exist—
  - (a) its functions under subsection (2)(a) and (b) fall to its former Head of Practice or (if unavailable) its former Head of Legal Services,
  - (b) if neither Head is available, its function under subsection (2)(b) falls to a person nominated by its approved regulator.

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(8) In this section, a reference to a licensed provider includes (as the context requires) a former licensed provider.

## 70 Safeguarding clients

- (1) Subsections (2) and (3) apply where—
  - (a) a licensed provider—
    - (i) has given (or is required to give) notice to its approved regulator under section 68(2)(a) or 69(2)(a), or
    - (ii) has had (or is to have) its licence revoked or suspended under this Part, and
  - (b) the approved regulator has not informed it (or has not had an opportunity to do so) that the approved regulator is satisfied that it has made sufficient arrangements for the safeguarding of its clients' interests.
- (2) The licensed provider must—
  - (a) prepare—
    - (i) in the case of revocation, final accounts,
    - (ii) in the case of suspension, interim accounts,which (in particular) detail all sums held on behalf of clients,
  - (b) comply with any directions given under subsection (3).
- (3) The approved regulator may direct the licensed provider to take specified action (or refrain from doing something) if the approved regulator considers that to be necessary or expedient for safeguarding the interests of the licensed provider's legal services clients.
- (4) Directions given under subsection (3) may (in particular) require the licensed provider to make available to a relevant person or body any—
  - (a) document or information (of whatever kind) held in the licensed provider's possession or control which—
    - (i) relates to, or is held on behalf of, a client of the licensed provider, or
    - (ii) relates to any trust of which the licensed provider (or one of the designated persons within it) is sole trustee or co-trustee only with other designated persons in the licensed provider,
  - (b) sum of money held by the licensed provider—
    - (i) on behalf of a client,
    - (ii) subject to any trust of the kind mentioned in paragraph (a)(ii).
- (5) For the purposes of subsection (4), a relevant person or body is—
  - (a) the particular client,
  - (b) the approved regulator,
  - (c) a provider of legal services that is properly instructed by the licensed provider, or the approved regulator, to act in place of the licensed provider.
- (6) The Court of Session may, on an application by the approved regulator, make an order—
  - (a) confirming that the licensed provider is required to comply with a direction given under subsection (3),

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- (b) varying the direction or imposing such conditions as the Court considers appropriate in the circumstances,
  - (c) that, without the leave of the Court, no payment be made by any bank, building society or other body named in the order out of any account (or any sum otherwise deposited) in the name of the licensed provider.
- (7) Before making such an order, the Court must—
- (a) give the licensed provider and any other person with an interest an opportunity to be heard,
  - (b) be satisfied that the direction or (as the case may be) freezing of an account represents an appropriate course of action in all the circumstances of the case.
- (8) The approved regulator may recover from the licensed provider any expenditure reasonably incurred by the approved regulator in consequence of its taking action under this section.
- (9) Where a licensed provider has ceased to exist, its functions under (or arising by virtue of) this section fall—
- (a) to its former Head of Practice or (if unavailable) its former Head of Legal Services,
  - (b) if neither Head is available, to a person nominated by its approved regulator.
- (10) The Scottish Ministers may by regulations make further provision about the steps that are, in the circumstances within subsection (1), to be taken to safeguard the interests of clients of licensed providers.
- (11) In this section, a reference to a licensed provider includes (as the context requires) a former licensed provider.

#### Commencement Information

**II** S. 70 in force at 1.4.2011 for specified purposes by [S.S.I. 2011/180, art. 3, Sch.](#)

VALID FROM 02/07/2012

#### 71 Distribution of client account

- (1) Any sums of the kind to which section 42 of the 1980 Act applies that are held in a client account (as referred to in that section) kept by a licensed provider are, in any of the events mentioned in subsection (2A) of that section, to be distributed in the same way as they would if they were subject to that section.
- (2) For the purpose of subsection (1), any reference in that section to an incorporated practice is to be read as if it were a reference to the licensed provider.

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