



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 3

#### CONFIRMATION AND WILL WRITING SERVICES

### CHAPTER 3

#### FURTHER PROVISION

#### **113 Regard to OFT input**

- (1) The Scottish Ministers, whenever consulting the OFT under section 92(4)(a) or 103(4) (a), must request the OFT—
  - (a) to give such advice as it considers appropriate in relation to the matter concerned,
  - (b) in considering what (if any) advice to give, to have particular regard to whether the matter concerned would have (or be likely to have) the effect of preventing, or significantly restricting or distorting, competition within the legal services market.
- (2) The Scottish Ministers are to take account of any advice given by the OFT within—
  - (a) the relevant consultation period, or
  - (b) otherwise, the period of 90 days beginning with the day on which they request the advice.
- (3) The Scottish Ministers may publish any advice duly given to them by the OFT.

#### **114 Complaints about services**

In the 2007 Act, after Part 2A (inserted by section 81) insert—

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*Status: This is the original version (as it was originally enacted).*

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## **“PART 2B**

### **SPECIAL PROVISION FOR CONFIRMATION AGENTS AND WILL WRITERS**

#### **57H Complaints about agents and writers**

- (1) Parts 1 and 2 apply in relation to complaints made about confirmation agents and will writers as they apply in relation to complaints made about practitioners.
- (2) Subsection (1) is subject to—
  - (a) subsection (3), and
  - (b) such further modification to the operation of Parts 1 and 2 as the Scottish Ministers may by regulations make for the purposes of subsection (1).
- (3) In relation to a services or conduct complaint about a confirmation agent or will writer, the relevant approving body is to be regarded as the relevant professional organisation.

#### **57I Handling complaints**

- (1) Parts 1 and 2 apply in relation to any complaint made about how an approving body has dealt with a conduct complaint as they apply in relation to a handling complaint (relating to a conduct complaint) made about a relevant professional organisation.
- (2) Subsection (1) is subject to such modification to the operation of those Parts as the Scottish Ministers may by regulations make for the purposes of that subsection.

#### **57J Levy payable**

- (1) A confirmation agent must pay to the Commission—
  - (a) the annual general levy, and
  - (b) the complaints levy (if arising),in accordance with Part 1.
- (2) A will writer must pay to the Commission—
  - (a) the annual general levy, and
  - (b) the complaints levy (if arising),in accordance with Part 1.
- (3) Section 29 applies for the purposes of subsections (1) and (2) as it applies for the purposes of sections 27(1) and 28(1).
- (4) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) to (3)—
  - (a) an approving body is to be regarded as a relevant professional organisation whose members are its confirmation agents or (as the case may be) will writers,

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- (b) a confirmation agent or (as the case may be) will writer is to be regarded—
  - (i) in connection with the annual general levy, as an individual person falling within the relevant category,
  - (ii) in connection with the complaints levy, as an individual practitioner of the relevant type.

### **57K Recovery of levy**

- (1) An approving body must—
  - (a) secure the collection by it, from its confirmation agents or (as the case may be) will writers, of the annual general levy due by them, and
  - (b) pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.
- (2) Subsection (3) of section 27 applies in relation to any sum due under subsection (1)(b) (including interest) as it applies in relation to any sum due under subsection (2)(b) of section 27.
- (3) Subsection (4) of section 27 applies in relation to any sum due under section 57J(1)(a) and (2)(a) (including interest) as it applies in relation to any sum due under subsection (1) of section 27.
- (4) Subsection (3) of section 28 applies in relation to any sum due under section 57J(1)(b) and (2)(b) (including interest) as it applies in relation to any sum due under subsection (1) of section 28.
- (5) For the application of sections 27(3) and (4) and 28(3) by virtue of subsections (2) to (4)—
  - (a) the approving body is to be regarded as the relevant professional organisation,
  - (b) each of its confirmation agents or (as the case may be) will writers is to be regarded—
    - (i) in relation to section 27(4), as an individual person falling within the relevant category,
    - (ii) in relation to section 28(3), as an individual practitioner of the relevant type.
- (6) Section 57J(1) and (2) is subject to subsection (1).

### **57L Interpretation of Part 2B**

For the purposes of this Part—

- “approving body”,
- “confirmation agent”,
- “will writer”,

are to be construed in accordance with Part 3 of the Legal Services (Scotland) Act 2010.”

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## **115 Privilege and immunity**

- (1) For the purposes of the law on defamation, the publication under this Part of any material is privileged unless it is proved that the publication was made with malice.
- (2) Neither an approving body nor any of its officers, members or employees is liable in damages for any act or omission occurring in the exercise (or purported exercise) of its functions under this Part unless it is shown that the act or omission was in bad faith.

## **116 Appeal procedure**

- (1) This section applies in relation to an appeal to the sheriff under this Part.
- (2) The appeal is to be made by way of summary application.
- (3) In the appeal, the sheriff may—
  - (a) uphold, vary or quash the decision that is the subject of the appeal,
  - (b) make such further order (including for the expenses of the parties) as is necessary in the interests of justice.
- (4) The sheriff's determination in the appeal is final.

## **117 Corporate offences**

- (1) Subsection (2) applies where—
  - (a) an offence under this Part is committed by a relevant organisation, and
  - (b) the commission of the offence—
    - (i) involves the connivance or consent of, or
    - (ii) is attributable to the neglect of, a responsible official of the organisation.
- (2) The official (as well as the organisation) commits the offence.
- (3) For the purpose of this section—
  - (a) a “relevant organisation” is—
    - (i) a company,
    - (ii) a limited liability partnership,
    - (iii) an ordinary partnership, or
    - (iv) any other body or association,
  - (b) a “responsible official” is—
    - (i) in the case of a company, a director, secretary, manager or other similar officer,
    - (ii) in the case of a limited liability partnership, a member,
    - (iii) in the case of an ordinary partnership, a partner,
    - (iv) in the case of another body or association, a person who is concerned in the management or control of its affairs,but in each case also extends to a person purporting to act in such a capacity.

## 118 Consequential modification

- (1) In the Confirmation of Executors (Scotland) Act 1858, in section 2 (petition to commissary), after “1990” insert “or by a confirmation agent within the meaning of Part 3 of the Legal Services (Scotland) Act 2010”.
- (2) In the 1980 Act—
  - (a) in section 32 (offence for unqualified persons to prepare certain documents)—
    - (i) in subsection (1), after paragraph (c) insert “or
    - (d) any will or other testamentary writing”,
    - (ii) in subsection (2)(a), for “or papers” substitute “, papers, will or testamentary writing”,
    - (iii) in subsection (2C), after “1990” insert “or to a confirmation agent within the meaning of Part 3 of the 2010 Act”,
    - (iv) after subsection (2C) insert—

“(2D) Subsection (1)(d) does not apply to a will writer within the meaning of Part 3 of the 2010 Act.”,
  - (b) in paragraph 1A of Schedule 4 (constitution, procedure and powers of Tribunal), after head (b)(ii) insert—

“(ia) confirmation agents or will writers within the meaning of Part 3 of the 2010 Act;”.
- (3) In section 12A (register of advice organisations) of the 1986 Act, after subsection (2) (b) insert—

“(ba) is a confirmation agent or will writer within the meaning of Part 3 of the Legal Services (Scotland) Act 2010;”.
- (4) In paragraph 2 of schedule 1 (the Scottish Legal Complaints Commission) to the 2007 Act, after sub-paragraph (6)(b) insert—

“(ba) confirmation agents or will writers within the meaning of Part 3 of the Legal Services (Scotland) Act 2010;”.