



Legal Services (Scotland) Act 2010

2010 asp 16

PART 2

REGULATION OF LICENSED LEGAL SERVICES

CHAPTER 2

LICENSED LEGAL SERVICES PROVIDERS

Non-solicitor investors

62 Fitness for involvement

- (1) An approved regulator must—
 - (a) before issuing a licence to a licensed legal services provider, or renewing it, satisfy itself as to the fitness of every non-solicitor investor in the licensed provider for having an interest in the licensed provider,
 - (b) thereafter, monitor as it considers appropriate the investor's fitness in that regard.
- (2) Licensing rules must—
 - (a) explain the basis on which a non-solicitor investor's fitness for having an interest in a licensed provider is determinable,
 - (b) provide that, where the approved regulator determines that the investor is unfit in that regard—
 - (i) a licence is not to be issued to the licensed provider (or renewed),
 - (ii) if issued, the licence is to be revoked or suspended.
- (3) But the approved regulator need not act as required by licensing rules made under subsection (2)(b) if, by such time as it may reasonably appoint, the licensed provider demonstrates to it that (following disqualification as required by section 65(1) or otherwise) the investor no longer has the relevant interest.
- (4) The approved regulator must, before making its final determination as to fitness, give the non-solicitor investor 28 days (or such longer period as it may allow) to—

Status: This is the original version (as it was originally enacted).

- (a) make representations to it,
 - (b) take such steps as the investor may consider expedient.
- (5) A person who is determined as unfit under this section may appeal against the determination—
- (a) to the sheriff,
 - (b) within the period of 3 months beginning with the date on which the determination is made.

63 Exemption from fitness test

- (1) Section 62(1) is subject to this section.
- (2) The approved regulator need not act as required by that section in relation to any exemptible investor in the licensed provider.
- (3) Licensing rules must explain—
 - (a) any circumstances in which the approved regulator proposes to rely on subsection (2),
 - (b) any threshold below the percentage specified in subsection (4) by reference to which it proposes to rely on subsection (2),
 - (c) where it proposes to rely on subsection (2), its reasons.
- (4) In subsection (2), an “exemptible investor” is an investor who has less than a 10% stake in the total ownership or control of the licensed provider.

64 Factors as to fitness

- (1) This section applies for the purposes of section 62.
- (2) The following are examples of things relevant as respects a non-solicitor investor’s fitness for having an interest in a licensed provider—
 - (a) the investor’s—
 - (i) financial position and business record,
 - (ii) probity and character,
 - (iii) family, business or other associations (so far as bearing on character),
 - (b) whether—
 - (i) the investor has ever caused, or substantially contributed to, a material breach of the terms or conditions of any licensed provider’s licence,
 - (ii) the investor’s involvement in the licensed provider may (in the approved regulator’s opinion) be detrimental to the observance of the regulatory objectives or adherence to the professional principles, or to the compliance with this Part or any other enactment, by any person or body,
 - (iii) the investor has ever contravened section 66(1) or (2) or there is (in the approved regulator’s opinion) a significant risk that the investor will ever contravene that section.
- (3) A non-solicitor investor is to be presumed to be unfit for having an interest in a licensed provider if one or more of the following conditions is met—
 - (a) the first condition is that the investor—

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

- (i) is subject to a trust deed granted by the investor for the benefit of the investor's creditors,
 - (ii) is subject to an individual voluntary arrangement under the Insolvency Act 1986, to repay the investor's creditors,
 - (iii) has been adjudged bankrupt and has not been discharged from bankruptcy, or
 - (iv) has been sequestrated (that is, sequestration of the investor's estate has been awarded) and the sequestration has not been discharged,
- (b) the second condition is that the investor is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 or corresponding Northern Ireland legislation,
- (c) the third condition is that the investor—
- (i) is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 or corresponding Northern Ireland legislation,
 - (ii) is disqualified by a court from holding, or otherwise has been removed by a court from, a position of business responsibility (for example, from being a director of a charity),
- (d) the fourth condition is that the investor—
- (i) has been convicted of an offence involving dishonesty, or
 - (ii) in respect of an offence, has been fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more.
- (4) Where a non-solicitor investor is a body, it is relevant as respects the investor's fitness for having an interest in a licensed provider whether or not the persons having (to any extent)—
- (a) ownership or control of the body, or
 - (b) any other material interest in it,
- would (if they were investors in the licensed provider in their own right) be held to be fit in that regard.
- (5) In subsection (3)(b) and (c)(i), "Northern Ireland legislation" has the meaning given in section 24(5) of the Interpretation Act 1978.

65 Ban for improper behaviour

- (1) Where an approved regulator determines that a non-solicitor investor in a licensed provider has contravened section 66(1) or (2), the approved regulator must disqualify the investor from having an interest in the licensed provider.
- (2) A disqualification under subsection (1)—
- (a) may be—
 - (i) without limit of time, or
 - (ii) for a fixed period,
 - (b) extends so as to apply in relation to every licensed provider (including a licensed provider that is subject to the regulation of a different approved regulator).

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

- (3) Before disqualifying an investor under subsection (1), the approved regulator must give the investor 28 days (or such longer period as it may allow) to—
 - (a) make representations to it,
 - (b) take such steps as the investor may consider expedient.
- (4) Practice rules must—
 - (a) set procedure (which the approved regulator is to follow) for imposing a disqualification under subsection (1),
 - (b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that subsection.
- (5) A person who is disqualified under subsection (1) may appeal against the disqualification—
 - (a) to the sheriff,
 - (b) within the period of 3 months beginning with the date on which the disqualification is imposed.

66 Behaving properly

- (1) A non-solicitor investor in a licensed provider must not (in that capacity) act in a way that is incompatible with—
 - (a) the regulatory objectives or the professional principles,
 - (b) the licensed provider’s duties under section 50(1), or
 - (c) its—
 - (i) other duties under this Part,
 - (ii) duties under any other enactment.
- (2) A non-solicitor investor in a licensed provider must not (in that capacity)—
 - (a) interfere improperly in the provision of legal or other professional services by the licensed provider,
 - (b) in relation to any designated or other person within the licensed provider—
 - (i) exert undue influence,
 - (ii) solicit unlawful or unethical conduct, or
 - (iii) otherwise behave improperly.

67 More about investors

- (1) Schedule 8 provides for other—
 - (a) requirements to which licensed legal services providers are subject,
 - (b) functions of approved regulators,
 in relation to interests in licensed providers.
- (2) The Scottish Ministers may by regulations make further provision—
 - (a) relating to interests in licensed providers,
 - (b) for licensing rules in connection with persons who have an interest in a licensed provider.
- (3) The Scottish Ministers may by regulations—
 - (a) amend the percentage specified in section 63(4) and paragraph 4(3) of schedule 8,

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

- (b) amend (by addition, elaboration or exception) a definition in subsection (6).
- (4) Regulations under subsection (2)(a) may (in particular)—
- (a) impose requirements to which a licensed provider, or an investor in a licensed provider, is subject,
 - (b) specify criteria or circumstances by reference to which a non-solicitor investor is to be presumed, or held, to be fit (or unfit),
 - (c) set out—
 - (i) what amounts (to any extent) to ownership, control or another material interest,
 - (ii) what interest (or type) is relevant as regards a particular percentage stake in ownership or control,
 - (iii) by reference to a family, business or other association, what other interest (or type) also counts towards such a stake,
 - (d) for circumstances where an interest is held by a body, set out—
 - (i) what interest (or type) in the body counts towards the interest held by it,
 - (ii) the extent to which the interest in it so counts.
- (5) Before making regulations under subsection (3), the Scottish Ministers must have the Lord President’s agreement.
- (6) In this Part—
- (a) an “investor” in a licensed provider is any person who has (to any extent)—
 - (i) ownership or control of the licensed provider, or
 - (ii) any other material interest in it,
 - (b) a “non-solicitor investor” in a licensed provider is an investor who is not entitled to practise—
 - (i) as a solicitor, a firm of solicitors or an incorporated practice,
 - (ii) in England and Wales or Northern Ireland, as a solicitor (outwith the meaning for this Act), or
 - (iii) as a registered European or foreign lawyer,
 - (c) the reference to a “solicitor investor” in a licensed provider is to be construed accordingly.
- (7) In sections 62 to 66, this section and schedule 8, a reference to a licensed provider includes an applicant to become one.