



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 2

#### REGULATION OF LICENSED LEGAL SERVICES

### CHAPTER 3

#### FURTHER PROVISION

#### *Complaints*

#### **79 Complaints about regulators**

- (1) Any complaint about an approved regulator is to be made to the Scottish Legal Complaints Commission.
- (2) The Commission is to determine whether or not the complaint is—
  - (a) one for which section 57E(1) of the 2007 Act makes provision,
  - (b) frivolous, vexatious or totally without merit.
- (3) And—
  - (a) if the Commission determines that the complaint falls within subsection (2)(a), the Commission is to proceed by reference to section 57E(1) of the 2007 Act,
  - (b) if the Commission determines that the complaint falls within subsection (2)(b), the Commission—
    - (i) must notify the complainer and the approved regulator accordingly (with reasons),
    - (ii) is not required to take any further action,
  - (c) if the Commission determines that the complaint does not fall within subsection (2)(a) or (b), the Commission must refer the complaint to the Scottish Ministers.
- (4) The Scottish Ministers must investigate any complaint about an approved regulator that is referred to them under subsection (3)(c).

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

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- (5) Where the Scottish Ministers do not uphold the complaint, they must notify the complainer and the approved regulator accordingly (with reasons).
- (6) Where the Scottish Ministers uphold the complaint, they must—
  - (a) notify the complainer and the approved regulator accordingly (with reasons), and
  - (b) decide whether to proceed under section 38.
- (7) The Scottish Ministers may delegate to the Commission any of their functions under subsections (4), (5) and (6)(a) (and, if they so delegate their function under subsection (4), they may also waive the referral requirement under subsection (3)(c)).
- (8) The Scottish Ministers may by regulations make further provision about complaints made about approved regulators (and how they are to be dealt with).

**Commencement Information**

- I1** S. 79 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
- I2** S. 79 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

**80 Levy payable by regulators**

- (1) An approved regulator must pay to the Scottish Legal Complaints Commission—
  - (a) in respect of each financial year, an annual levy,
  - (b) if arising, a complaints levy.
- (2) The amount of the annual levy or complaints levy payable by an approved regulator—
  - (a) is to be determined by the Commission,
  - (b) may be—
    - (i) different from any amount payable as an annual general levy or (as the case may be) a complaints levy under Part 1 of the 2007 Act,
    - (ii) in either case, of different amounts (including nil) in different circumstances.
- (3) The complaints levy arises as respects an approved regulator where—
  - (a) the Scottish Ministers delegate to the Commission their function under section 79(4) in relation to a complaint made about the approved regulator, and
  - (b) the Commission upholds the complaint.
- (4) Before determining for a financial year the amount of the annual levy or complaints levy, the Commission must consult—
  - (a) each approved regulator (with particular reference to the proposed amount to be payable by it),
  - (b) the Scottish Ministers.

**Commencement Information**

- I3** S. 80 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch. (with art. 4)

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

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## **81 Complaints about providers**

In the 2007 Act, after Part 2 insert—

### **“PART 2A**

#### **SPECIAL PROVISION FOR LICENSED PROVIDERS**

##### **57A Complaints about licensed providers**

- (1) Parts 1 and 2 apply in relation to complaints made about licensed legal services providers as they apply in relation to complaints made about practitioners.
- (2) Subsection (1) is subject to—
  - (a) subsections (3) and (4), 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—
    - (i) subsection (1),
    - (ii) section 57B(4) and (5).
- (3) In relation to a services complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.
- (4) A conduct complaint may not be made about a licensed provider, but—
  - (a) such a complaint may be made about a practitioner within such a provider,
  - (b) the provisions relating to such a complaint remain (subject to such modification as to those provisions as is made under subsection (2)(b)) applicable for the purposes of section 57B(4) and (5).
- (5) Where an approved regulator receives (from a person other than the Commission) a complaint about the conduct of, or any services provided by, a practitioner within one of its licensed providers, the approved regulator must without delay send to the Commission the complaint and any material that accompanies it.

##### **57B Regulatory complaints**

- (1) There is an additional type of complaint which applies only in relation to licensed providers (a “regulatory complaint”).
- (2) A regulatory complaint is where any person suggests that a licensed provider is failing (or has failed) to—
  - (a) have regard to the regulatory objectives,
  - (b) adhere to the professional principles,
  - (c) comply with—
    - (i) its approved regulator's regulatory scheme,
    - (ii) the terms and conditions of its licence.
- (3) In relation to a regulatory complaint about a licensed provider, its approved regulator is to be regarded as the relevant professional organisation.

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- (4) The procedure in respect of a regulatory complaint is (by virtue of section 57A(4)(b)) the same as it would be for a conduct complaint about a licensed provider, subject to such modification as to that procedure as is made under section 57A(2)(b).
- (5) The Commission and the approved regulator have (by virtue of section 57A(4)(b)) the same functions in relation to a regulatory complaint as they would have in relation to a conduct complaint about a licensed provider, subject to such modification as to those functions as is made under section 57A(2)(b).

### 57C Levy, advice and guidance

- (1) A licensed provider must pay to the Commission—
  - (a) the annual general levy, and
  - (b) the complaints levy (if arising),
 in accordance with Part 1 (and in addition to any levy payable under that Part by a solicitor or other person within the licensed provider).
- (2) Section 29 applies for the purposes of subsection (1) as it applies for the purposes of sections 27(1) and 28(1).
- (3) For the application of sections 27(1), 28(1) and 29 by virtue of subsections (1) and (2)—
  - (a) an approved regulator is to be regarded as a relevant professional organisation whose members are its licensed providers,
  - (b) a licensed provider 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.
- (4) But the amount of the annual general levy for a licensed provider may be—
  - (a) different from the amount to be paid by individuals,
  - (b) of different amounts (including nil) in different circumstances.
- (5) The Commission—
  - (a) must (so far as practicable) provide advice to any person who requests it as respects the process of making a regulatory complaint to the Commission,
  - (b) may issue guidance under section 40 to approved regulators and licensed providers as respects how licensed providers are to deal with regulatory complaints.

### 57D Recovery of levy

- (1) An approved regulator must—
  - (a) secure the collection by it, from its licensed providers, 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.

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- (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 57C(1)(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 57C(1)(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 approved regulator is to be regarded as the relevant professional organisation,
  - (b) each of its licensed providers 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 57C(1) is subject to subsection (1).

#### 57E **Handling complaints**

- (1) Parts 1 and 2 apply in relation to any complaint made about how an approved regulator has dealt with a regulatory 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.

#### 57F **Effectiveness of compensation fund**

- (1) Section 39 also applies in relation to a compensation fund of its own that is maintained by an approved regulator in furtherance of section 24(2) of the Legal Services (Scotland) Act 2010.
- (2) For the application of section 39 by virtue of subsection (1)—
  - (a) any such compensation fund is to be regarded as falling within subsection (1)(c) of that section,
  - (b) the approved regulator is to be regarded as the relevant professional organisation.

#### 57G **Interpretation of Part 2A**

For the purposes of this Part—  
“approved regulator”  
“licensed legal services provider” (or “licensed provider”),

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“professional principles”,  
“regulatory objectives”  
“regulatory scheme”  
are to be construed in accordance with Part 2 of the Legal Services (Scotland) Act 2010.”.

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**Commencement Information**

- I4** S. 81 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, **Sch.**  
**I5** S. 81 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, **Sch.** (with art. 3)

**Changes to legislation:**

There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010,  
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