

EXECUTIVE NOTE

THE LEGAL SERVICES (SCOTLAND) ACT 2010 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISIONS) ORDER 2012

SSI 2012/152 (C. 14)

The above instrument was made in exercise of the powers conferred by section 150(2) and (4)(b) of the Legal Services (Scotland) Act 2010 (“the 2010 Act”).

Background

The 2010 Act allows solicitors who offer legal services in Scotland to operate using certain business models which were previously prohibited. It removes restrictions on solicitors entering into business relationships with non-solicitors, allowing investment by non-solicitors and external ownership, and creates a regulatory framework in which the new types of business will operate. The new types of business are called licensed legal services providers (“licensed providers”) and will be licensed and regulated by approved regulators which in turn will be approved, authorised, and regulated by the Scottish Ministers.

Policy objectives

Commencement

This Order brings into force the provisions of Part 2 of, and schedules 1 to 8 to, the 2010 Act in so far as these are not already in force. It also brings into force certain provisions of Part 4 of the Act which are connected with Part 2. The Order will enable the formation of approved regulators and licensed providers, and the creation of the regulatory framework mentioned above, within which licensed providers will operate.

Transitional provision relating to complaints levies payable by licensed providers

Section 81 of the 2010 Act inserts new section 57C into the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”). Subsection (1)(a) requires licensed providers to pay the annual general levy to the Scottish Legal Complaints Commission (“the Commission”) and subsection (4) allows the Commission to vary this levy from that applicable to existing practitioners. Subsection (1)(b) requires a licensed provider in certain circumstances to pay a complaints levy to the Commission.

However, the process of setting these levies is tied to the Commission’s budgetary cycle, provided for in section 29 of the 2007 Act. This requires consultation on the proposed budget with each professional organisation and its members in January, publication of the responses by 31 March, and laying the budget before Parliament no later than 30 April.

As it is expected that the first approved regulators could be approved towards the end of 2012, transitional arrangements are required to allow the Commission to consult on, and set, both the annual general and the complaints levies for licensed providers outside the usual budgetary cycle. This Order provides for this in article 3 and for the

consultation to include those bodies which the Scottish Ministers have advised the Commission as having an interest in applying to become approved regulators. This will ensure that all potentially affected parties are consulted, particularly those bodies which may be in the process of applying to become regulators.

Transitional provision relating to complaints levies payable by approved regulators

Section 80 of the 2010 Act requires approved regulators to pay an annual levy and a complaints levy to the Commission. Before setting these levies, the Commission must consult each approved regulator and the Scottish Ministers. However, as the levies may potentially be set before the approved regulators are in place, it is considered appropriate that this consultation process should include those bodies which the Scottish Ministers have advised the Commission as having an interest in applying to become approved regulators. This Order makes such provision in article 4.

Consultation

An informal consultation has taken place with the Commission with regard to the transitional provisions in articles 3 and 4. Any comments received were taken into account in the development of this Order.

Impact Assessments

An Equality Impact Assessment was prepared for the Legal Services (Scotland) Bill, and which found no evidence of differential impact in respect of disability, gender, sexual orientation, race/ethnicity, or religion/belief. A further assessment was considered, but as this Order does not introduce new policy but simply commences provisions in the 2010 Act (with appropriate transitional arrangements), it was considered that this was unnecessary.

The Scottish Government also considered whether an environmental impact assessment was required. However, as it considers that the instrument has no environmental impact, no assessment was considered necessary.

A Regulatory Impact Assessment was carried out for the Legal Services (Scotland) Bill.¹ A Business and Regulatory Impact Assessment is not considered necessary for this instrument, as it does not introduce substantive new policy and has no further significant impact on the Scottish Government, local government or on business.

Financial Effects

This instrument does not have any new financial effects that were not anticipated when the enabling legislation was enacted. A Financial Memorandum was produced which set out the financial implications of the Bill.²

1 The regulatory impact assessment for the Legal Services (Scotland) Bill can be viewed at www.scotland.gov.uk/Resource/Doc/980/0087717.pdf

2 See [http://www.scottish.parliament.uk/S3/Bills/Legal%20Services%20\(Scotland\)%20Bill/b30s3-intro-en.pdf](http://www.scottish.parliament.uk/S3/Bills/Legal%20Services%20(Scotland)%20Bill/b30s3-intro-en.pdf), pages 34ff

Scottish Government

Justice Directorate

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