

EXECUTIVE NOTE TO
THE LEGAL SERVICES (SCOTLAND) ACT 2010 (ANCILLARY
PROVISION) REGULATIONS 2012

SSI 2012/212

The above instrument, if approved, will be made in exercise of the powers conferred by section 148(1) of the Legal Services (Scotland) Act 2010 (“the 2010 Act”). The instrument is subject to the affirmative procedure.

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.

This instrument makes minor amendments to three pieces of primary legislation:

- the Solicitors (Scotland) Act 1980 (“the 1980 Act”) in respect of registered foreign lawyers;
- the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) in respect of the provision of legal aid; and
- the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) in respect of the ancillary provision in that Act.

Amendment of the Solicitors (Scotland) Act 1980

Section 60A of the 1980 Act makes provision for foreign lawyers to be registered with the Law Society of Scotland for the purposes of entering into multi-national practices (“MNPs”) with solicitors or incorporated practices. The 2010 Act contains provision relating to these registered foreign lawyers (“RFLs”). Specifically, section 67 of the 2010 Act provides that RFLs are to be classed as solicitor investors and so be able to own a majority share in licensed providers and be exempt from certain requirements applying to non-solicitor investors. The policy intention was to allow RFLs to work within licensed providers as solicitor investors.

Section 60A(4) of the 1980 Act, however, provides that foreign lawyers can only be registered for the purposes of entering into MNPs. Whilst this does not prevent existing RFLs from working within licensed providers, or from investing in such entities, it does prevent foreign lawyers from being registered as such for the purposes of becoming a solicitor investor in a licensed provider.

Policy objectives

Given the clear intention to allow RFLs to work within licensed providers as solicitor investors, it is inconsistent to only allow such individuals to do so if they are registered for the separate purpose of involvement in MNPs. The policy intention behind this instrument is to allow foreign lawyers to be registered not only for the purposes of entering into an MNP, but also for the purpose of becoming a solicitor investor in a licensed provider under the 2010 Act. This is achieved by the consequential amendments made to the 1980 Act by regulation 2.

Amendment of the Legal Aid (Scotland) Act 1986

The 2010 Act creates a new type of legal services provider (the licensed provider), and these firms are likely to undertake legal aid work. However, licensed providers are not currently referred to in various provisions within the 1986 Act. If amendments are not made to the 1986 Act, this is likely to present some issues if licensed providers wish to carry out legal aid work.

Policy objective

The policy objective is to ensure that licensed providers are referred to where appropriate in the 1986 Act, to allow them to carry out legal aid work in the same way that current law firms can. A number of consequential amendments are made to this end in regulation 3.

Amendment of the Legal Profession and Legal Aid (Scotland) Act 2007

Section 145 of the 2010 Act amends section 78 of the 2007 Act, to provide that the Scottish Ministers may make further provision under that section even in areas altered by the Legal Services Act 2007. However, no reference is made to the mechanism by which such further provision can be made.

Policy objective

The policy objective is to clarify that the power to make further provision is exercisable by order. This is achieved by regulation 4, which amends section 78(1A) of the 2007 Act.

Consultation

Informal consultation has taken place:

- with the Lord President, the Law Society of Scotland and the Institute of Chartered Accountants of Scotland, in respect of the amendment to the 1980 Act; and
- with the Scottish Legal Aid Board in respect of the amendments to the 1986 Act.

Any comments were taken into consideration when developing these regulations.

No consultation was carried out in relation to the amendment to the 2007 Act, given that it simply corrects a minor drafting error.

Impact Assessments

An Equality Impact Assessment was prepared for the Legal Services (Scotland) Bill, 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 these regulations do not introduce new policy but provide for the administration of the policy introduced by the 2010 Act, 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) Bill¹. 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

Scottish Government

Justice Directorate

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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