

**EXECUTIVE NOTE TO**  
**THE LICENSED LEGAL SERVICES (SPECIFICATION OF REGULATED**  
**PROFESSIONS) (SCOTLAND) REGULATIONS 2012**

**SSI 2012/213**

The above instrument, if approved, will be made in exercise of the powers conferred on by section 49(4) 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.

Section 49 of the 2010 Act requires that at least 51% of the total ownership or control of any licensed provider must lie with qualifying investors (namely solicitor investors<sup>1</sup> and investors who are members of other regulated professions). The Scottish Ministers are required to set out, by regulations, what is (or is not) to be regarded as a “regulated profession”, and may also specify what is to be regarded as a professional association, professional activities, or membership of a profession.

The specification is for the purposes of the 2010 Act only, and applies no further than in connection with the ownership criteria for licensed providers. It does not prevent persons who are not part of a regulated profession from possessing an interest in a licensed provider but it does mean that they will not be regarded as qualifying investors. Non-solicitors who are regarded as members of regulated professions are still subject to the fitness for involvement test set out in section 62 of the 2010 Act.

**Policy objectives**

The Scottish Government’s general approach is to maintain flexibility in terms of the business structures which will be permitted, in order to maximise opportunities for innovative new approaches to the provision of legal services.

However, it recognises the uncertainty inherent in establishing any new regulatory regime, and considers an incremental approach to non-solicitor ownership and control of licensed providers to be prudent. Therefore, the Scottish Government intends to

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<sup>1</sup> Solicitor investors are defined in section 67 of the 2010 Act as those who are entitled to practise as a solicitor, a firm of solicitors or an incorporated practice; a solicitor in England and Wales or Northern Ireland; or as a registered European or foreign lawyer.

specify a limited list of professions to be set out in the first instance, with the possibility of adding to this list at a later date, should this be considered appropriate. The situation will be monitored as the regulatory framework develops and, as with other aspects of the system, adjustments can be made in future if necessary or appropriate.

The regulations, therefore, set out a list of professions which are to be regarded as regulated professions for the purposes of section 49 of the 2010 Act, and describes the individuals who are to be regarded as being members of such professions. All of the professions listed are considered to meet the criteria set out in the Scottish Government's consultation paper as being necessary for inclusion – in particular, that they are:

- subject to a robust system of regulation, including a code of conduct, entry requirements (relating to training and/or qualifications) and disciplinary procedures; and
- reasonably likely to enter into a business arrangement with solicitors, and so take advantage of the new business structures permitted by the 2010 Act.

## **Consultation**

There is a statutory requirement in section 49(5)(a) of the 2010 Act for the Scottish Ministers to obtain the agreement of the Lord President before making regulations. The Lord President has been consulted, and has given his agreement to the content and form of these regulations.

There is a statutory requirement in section 49(5)(b) of the 2010 Act for the Scottish Ministers to consult various bodies prior to making regulations (namely, the Law Society of Scotland; every approved regulator; the OFT and such other organisations representing the consumer interest as is considered appropriate; and such other persons or bodies as considered appropriate). There is also a general requirement under section 5 of the 2010 Act for the Scottish Ministers to consult, where considered appropriate, such persons and bodies as appear to have a significant interest in the subject matter in question.

To satisfy these consultation requirements, a public consultation exercise was held in 2011.<sup>2</sup> The responses to the consultation, which included suggestions of which professions should be designated as regulated professions for the purposes of the 2010 Act, were taken into account during the development of the regulations. Furthermore, the responses will continue to inform further examination of professions which may be so designated in the future.

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**2** The following documents relating to the consultation exercise are available online:

- consultation paper (<http://www.scotland.gov.uk/Publications/2011/02/09105855/0>)
- responses to the consultation (<http://www.scotland.gov.uk/Topics/Justice/legal/17822/10190/profession-reform-1/Bill/consultownershipcontrol>)
- consultation analysis (<http://scotland.gov.uk/Publications/2012/01/06073359/0>)

A consultation report will also be published on the Scottish Government website in June 2012.

## **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. This assessment has been reconsidered given the new policy introduced by this instrument and, as before, it was concluded that there would be no differential impact. An updated version of the Equality Impact Assessment will be published in due course.

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.<sup>3</sup> A Business and Regulatory Impact Assessment is not considered necessary for this instrument, as it will have 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 Legal Services (Scotland) Bill.<sup>4</sup>

Scottish Government

Justice Directorate

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<sup>3</sup> The regulatory impact assessment for the Legal Services (Scotland) Bill can be viewed at [www.scotland.gov.uk/Resource/Doc/980/0087717.pdf](http://www.scotland.gov.uk/Resource/Doc/980/0087717.pdf)

<sup>4</sup> 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