

2012 No. 153

LEGAL PROFESSION

The Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012

<i>Made</i>	- - - -	<i>17th May 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>21st May 2012</i>
<i>Coming into force</i>	- -	<i>2nd July 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 57A(2)(b) of the Legal Profession and Legal Aid (Scotland) Act 2007^(a), sections 26(2) and 79(8) of the Legal Services (Scotland) Act 2010^(b) and all other powers enabling them to do so.

In accordance with section 5 of the Legal Services (Scotland) Act 2010, the Scottish Ministers considered it appropriate to consult, and have consulted, such persons or bodies as appear to them to have a significant interest in the particular subject matter to which the making of these Regulations relates.

PART 1

Citation, commencement and interpretation

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012 and come into force on 2nd July 2012.

(2) In these Regulations—

“the 2007 Act” means the Legal Profession and Legal Aid (Scotland) Act 2007; and

“the 2010 Act” means the Legal Services (Scotland) Act 2010.

^(a) 2007 asp 5. Section 57A was inserted by the Legal Services (Scotland) Act 2010 (asp 16), section 81.
^(b) 2010 asp 16.

PART 2

Complaints about licensed legal services providers

Modification of the operation of Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007

2.—(1) For the purposes of section 57A(1) of the 2007 Act (complaints about licensed providers), Part 1 of the 2007 Act applies as if it had been further modified in accordance with this regulation.

(2) In section 2(1)(b) of the 2007 Act (receipt of complaints: preliminary steps) the reference to “professional services” is a reference to—

- (a) legal services; and
- (b) such other professional services as are customarily provided by a practitioner.

(3) Where the Commission considers that any element of a services complaint about a licensed legal services provider—

- (a) concerns the professional activities of a person who is a member of a profession but is not a practitioner; and
 - (b) is capable of being dealt with by a professional association which regulates that profession under the statutory or administrative arrangements applying to that profession,
- the Commission may refer the element of the services complaint to that professional association.

(4) Where the Commission refers an element of a services complaint to a professional association under paragraph (3) and the Commission is satisfied that it is being dealt with by the professional association under the statutory or administrative arrangements applying to that profession, the Commission—

- (a) is not required to take the preliminary steps mentioned in section 2(4) of the 2007 Act, or any further action under any other provision of Part 1 of the 2007 Act, in relation to that element; and
- (b) must give notice in writing to that effect to—
 - (i) the complainer and the licensed legal services provider; and
 - (ii) any other persons that the Commission considers appropriate.

(5) In this regulation—

“legal services” has the same meaning as it does for the purposes of the 2010 Act(a).

PART 3

Complaints about approved regulators

Notification to the Scottish Ministers

3.—(1) This regulation applies only where the Scottish Ministers have delegated, to the Scottish Legal Complaints Commission, their functions under section 79(4) of the 2010 Act (complaints about regulators)(b).

(2) Where the Commission upholds a complaint under that section, it must—

- (a) give notice in writing to the Scottish Ministers specifying—
 - (i) that it has upheld a complaint; and

(a) Regulation 2 is made under section 57A(2)(b) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5). See section 3 of the Legal Services (Scotland) Act 2010 (asp 16) for the meaning of “legal services”.

(b) The Scottish Ministers may delegate to the Commission their functions under section 79(4) of the Act by virtue of section 79(7) of the Act.

- (ii) the reasons for doing so; and
- (b) provide the Scottish Ministers with any other information regarding the complaint that the Commission considers may be helpful, or the Scottish Ministers may request, to assist them in making and implementing the decision referred to in section 79(6)(b) of the 2010 Act.

PART 4

Compensation arrangements regarding the Guarantee Fund

Application of regulations 5 to 8

- 4.** Regulations 5 to 8 apply only in respect of a licensed legal services provider—
- (a) for which the approved regulator is not the Law Society; and
 - (b) that is required, by compensation rules made by reference to section 25(3) of the 2010 Act, to make contributions to the Guarantee Fund.

Issuing of licences

5.—(1) Where an approved regulator issues a licence (including a provisional licence) in accordance with its licensing rules made under section 14 of the 2010 Act, it must, within the permitted timescale, provide the following information to the Law Society—

- (a) the name of the licensed provider;
- (b) the date on which the licence was issued;
- (c) the term of the licence; and
- (d) details of any conditions or restrictions attaching to the licence.

(2) In this regulation—

“within the permitted timescale” means as soon as reasonably practicable and not later than a period of 28 days commencing on the day after the day on which the licence was issued.

Changes in circumstances regarding licences

6.—(1) An approved regulator must, within the permitted timescale, notify the Law Society of—

- (a) the suspension or revocation of any licence;
- (b) the reinstatement of any revoked or suspended licence;
- (c) the termination or renewal of any licence;
- (d) the variation of the term of, or any conditions or restrictions attaching to, a licence; and
- (e) the date on which any of these events occur.

(2) In this regulation—

“within the permitted timescale” means as soon as reasonably practicable and not later than a period of 28 days commencing on the day after the day on which the event specified in paragraph (1) occurs.

Changes in circumstances regarding licensed providers

7.—(1) An approved regulator must, within the permitted timescale, notify the Law Society of a change in the name of any licensed provider and the date on which this change occurred.

(2) In this regulation—

“within the permitted timescale” means as soon as reasonably practicable and not later than a period of 28 days commencing on the day after the day on which the approved regulator is notified of the change.

8.—(1) An approved regulator must, within the permitted timescale, notify the Law Society of any other change in the circumstances regarding the affairs of a licensed provider which it considers to be relevant to the Law Society for the purposes of administering the Guarantee Fund and the date on which this change occurred.

(2) In this regulation—

“within the permitted timescale” means as soon as reasonably practicable and not later than a period of 28 days commencing on the day after the day on which the approved regulator is made aware of the change in circumstances.

St Andrew's House,
Edinburgh
17th May 2012

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision in respect of licensed legal services.

Complaints about licensed legal services providers

Section 57A of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) provides that Parts 1 and 2 of that Act apply to complaints made about licensed legal services providers as they apply in relation to complaints about practitioners.

Regulation 2 modifies the way in which Part 1 of the 2007 Act operates in relation to complaints about licensed legal services providers.

Firstly, it provides that a services complaint about a licensed legal services provider may be made in respect of the provision of legal services (as defined in section 3 of the Legal Services (Scotland) Act 2010 (“the 2010 Act”)) and such other professional services which are customarily provided by a practitioner (paragraph (2)).

Secondly, it allows the Scottish Legal Complaints Commission to refer any element of a services complaint about a licensed legal services provider which concerns the professional activities of a professional who is not a practitioner to the appropriate professional association rather than dealing with the complaint itself (paragraphs (3) and (4)).

Complaints about approved regulators

Section 79 of the 2010 Act provides for complaints to be made to the Scottish Legal Complaints Commission about approved regulators and requires the Scottish Ministers to investigate any complaint referred to them by the Commission under this section. The requirements in relation to the Scottish Ministers may, however, be delegated to the Commission.

Regulation 3 provides that, where the Scottish Ministers delegate their functions under section 79 of the 2010 Act to the Commission, the Commission must give notice to the Scottish Ministers of any complaint that it upholds, the reasons for doing so and any other information which will assist the Scottish Ministers in deciding whether to take measures under section 38 of the 2010 Act in relation to the approved regulator.

Compensation arrangements regarding the Guarantee Fund

Section 24 of the 2010 Act requires an approved regulator to make arrangements for a compensation fund from which to make good losses which may be suffered as a result of dishonesty on the part of the licensed legal services providers which it regulates.

Regulations 4 to 8 make provision in relation to licensed legal services providers (other than those regulated by the Law Society of Scotland) which are required, by compensation rules made by reference to section 25(3) of the 2010 Act, to make contributions to the Scottish Solicitors Guarantee Fund. The Guarantee Fund is vested in the Law Society of Scotland under section 43(1) of the Solicitors (Scotland) Act 1980 (c.46).

Regulation 5 requires an approved regulator to notify the Law Society of Scotland of certain information about a licensed legal services provider where the approved regulator issues a licence to that body.

Regulation 6 requires an approved regulator to notify the Law Society of Scotland of certain changes in circumstances regarding a licence.

Regulations 7 and 8 require an approved regulator to notify the Law Society of Scotland of certain changes in circumstances regarding a licensed legal services provider.