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By Email:

Consultation: Complaints Against Approved Regulators (Scotland) Regulations 2018 and Administrative Guidance on Complaints Handling

Purpose

The purpose of this letter is to consult on the:

- (1) draft Complaints Against Approved Regulators (Scotland) Regulations made under section 79(8) of the Legal Services (Scotland) Act 2010 making provision about complaints handling against an approved regulator except handling complaints under section 57E(1) of the Legal Profession and Legal Aid (Scotland) Act 2007
- (2) draft Guidance on complaints handling against approved regulators,
- (3) the delegation by the Scottish Ministers of their functions under section 79(4), (5) and (6)(a) to the Scottish Legal Complaints Commission (“the Commission”) and to waive the referral requirement imposed on the Commission under section 79(3)(c)

Timing

We are inviting responses to this consultation by Friday 10 August 2018.

Background: Alternate Business Structures for Legal Services

The Legal Services (Scotland) Act 2010 (“the Act”) removes restrictions which previously prevented solicitors entering into business relationships with non-solicitors, allowing both investment by non-solicitors and non-solicitors. Solicitors and/or other regulated professionals i.e. non-solicitor professionals such as accountants will require to hold at least a 51% majority stake in the business.

It is anticipated that the introduction of alternative business structures to the legal services market will provide clients with a wider access to legal services and they will be able to expect the same standards of service, advice and consumer protection

The Act creates a tiered regulatory framework for the new business entities, licenced legal service providers, which provide legal services for a fee, gain or reward under a licence issued by an approved regulatory. This framework will operate as follows:

1. Scottish Ministers will authorise, approve and monitor approved regulators.
2. Approved regulators will in turn license and regulate licensed providers.
3. A licensed provider will have obligations to manage and oversee people in the entity – including lawyers, other professionals and non-professionals – in a way which is compatible with the regulatory regime imposed by the approved regulator.

Under the Act, a professional or other body can become an approved regulator by a two-stage process. The first stage is to obtain approval and the second to obtain authorisation both by application to the Scottish Ministers. If an application for approval is granted, then this means that the body can now call itself an approved regulator. It is only after successfully being granted an application for authorisation that the approved regulator can regulate its licensed providers.

As part of the approval process, the approved regulator must make and implement a regulatory scheme for its licensed legal service providers. This must include details about three sets of rules:

1. Licensing rules: relating to the application process and the issuing or renewal of licences.
2. Practice rules: governing how licensed legal service providers operate.
3. Compensation rules: governing the arrangements for compensating the clients of licensed providers for financial loss resulting from the dishonesty of the licensed legal service provider or someone in it.

The scheme regulates licensed providers as entities – individuals within the entities who are regulated by professional bodies will continue to be so regulated by them. For example, solicitors will be regulated by the Law Society of Scotland.

The Law Society of Scotland submitted an application to Scottish Ministers on 16 December 2015 to become an approved regulator of licensed legal services providers, under the 2010 Act. Scottish Ministers wrote to the Law Society of Scotland on 17 January 2017 approving them as an approved regulator of licensed legal services providers, as the first part of a two stage process. The second stage is authorisation of the Law Society as an approved regulator. Having been approved by the Scottish Ministers as an approved regulator, the Law Society may not exercise any of its functions unless it is authorised to do by Scottish Ministers (Section 10 subsection (1).of the 2010 Act. Subsection (2) provides that Scottish Ministers can only give their authorisation if they are satisfied as to the matters mentioned in section 7 (1) and that it continues to meet any criteria provided for in regulations made under section 7 (5) (b).. The Law Society must submit an application to the Scottish Ministers requesting authorisation to act .

Approved Regulators: Complaints Handling

Section 79 of the 2010 Act outlines the process for making complaints against an approved regulator. It also contains a power to make further provision by regulations. The attached draft Complaints Against Approved Regulators (Scotland) Regulations make further provision and are being consulted on in accordance with section 5 of the 2010 Act.

The attached draft **guidance document** sets out the role of the Scottish Ministers in the handling of complaints against approved regulators. Under section 79, the Scottish Ministers have a function of investigating and determining a complaint. They have the discretion to delegate the function to the Commission.

The Scottish Ministers intend to write to the Commission formally **delegating** their functions of investigating a complaint deciding a complaint and notifying the complainer and approved regulator of the outcome. In addition, they will waive the requirement on the Commission to refer a complaint to the Scottish Ministers.

If you have any questions about this consultation, please contact me by email on absforlegalservices@gov.scot or by telephone on 0131 244 5461.

A Business and Regulatory Impact Assessment will follow as soon as practicable.

Yours sincerely,

A handwritten signature in black ink that reads "Laura Sexton". The signature is written in a cursive, flowing style.

LAURA SEXTON

Responding to the Consultation

We are inviting responses to this consultation by **Friday 10 August 2018**.

ALTERNATE BUSINESS STRUCTURES FOR LEGAL SERVICES – RESPONSE SHEET

Please submit your formal response to this consultation using the Scottish Government mailbox absforlegalservices@gov.scot. Please ensure that you respond by 10 August 2018 at the latest.

Please send this coversheet and your submission to the following address: absforlegalservices@gov.scot

Or in hard copy to:

**Laura Sexton
Scottish Government
Access to Justice Unit
GW14
St Andrew's House
Regent Rd
Edinburgh
EH1 3DG**

Information required:

Name of organisation or person responding:

Contact name (if responding on behalf of an organisation):

Address and telephone number. Email address:

Disclosure

Have you submitted any confidential evidence?
(Y/N) _____

If any of the evidence or views submitted are deemed confidential, please clearly mark these sections of the evidence.

Are you content for this submission to be published on our website?
(Y/N) _____

Are you content for your name to be supplied with the response on our website or do you wish the response to be anonymous on the website?
(Y/N) _____

Would you be content to be approached by the review for further discussion on your submission?
(Y/N) _____

N.B. The Scottish Government is a data controller under the Data Protection Act 2018. Information collected by the Review will be subject to the Act which balances the legitimate needs of organisations to collect and use personal data against the right of individuals to respect for the privacy of their personal details.