

2018 No. 341

LEGAL PROFESSION

The Licensed Legal Services (Complaints About Approved Regulators) (Scotland) Regulations 2018

Made - - - - *1st November 2018*

Laid before the Scottish Parliament *5th November 2018*

Coming into force - - *17th December 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 79(8) of the Legal Services (Scotland) Act 2010(a) and all other powers enabling them to do so.

In accordance with section 5(2) of that Act, 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.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Licensed Legal Services (Complaints About Approved Regulators) (Scotland) Regulations 2018 and come into force on 17 December 2018.

(2) In these Regulations—

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

“the Commission” means the Scottish Legal Complaints Commission,

“the Investigator” means—

(a) the Scottish Ministers, or

(b) the Commission, where the Scottish Ministers have delegated to it their functions under section 79(4) of the 2010 Act (complaints about regulators)(b).

Application

2. These Regulations apply to complaints under section 79 of the 2010 Act about an approved regulator except complaints for which section 57E(1) of the Legal Profession and Legal Aid (Scotland) Act 2007(c) (handling complaints) makes provision.

(a) 2010 asp 16.

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

(c) 2007 asp 5. Section 57E was inserted by section 81 of the 2010 Act.

Investigation of multiple complaints

- 3.—(1) This regulation applies where the Investigator considers that more than one complaint—
- (a) concerns the same act or omission (or series of acts or omissions) by an approved regulator or approved regulators, or
 - (b) alleges a failure to comply by an approved regulator or approved regulators with the same requirement imposed by or under the 2010 Act.
- (2) The Investigator may conduct a single investigation into the complaints about an approved regulator or approved regulators

Interim report

4. Where the Investigator is conducting an investigation, the Investigator may at any time prior to determining a complaint, prepare a written interim report in relation to the investigation and must send a copy of any such report to—
- (a) the complainer,
 - (b) the relevant approved regulator or approved regulators, and
 - (c) where the Commission is the Investigator, the Scottish Ministers.

Obtaining of information, documents and explanations from an approved regulator

- 5.—(1) Where the Investigator considers it necessary to do so for the purpose of investigating a complaint, it may give a notice to the approved regulator.
- (2) A notice under paragraph (1) may require—
- (a) the provision of information to the Investigator, at a time and place specified in the notice, being information which is within the knowledge of the approved regulator and relates to the complaint,
 - (b) the production or delivery of documents to the Investigator, at a time and place specified in the notice, that are within the possession or control of the approved regulator and relate to the complaint,
 - (c) an explanation, within such period as the notice specifies being not less than 28 days beginning with the date on which the notice was served, from the approved regulator regarding the matter to which the complaint relates.
- (3) The Investigator must without delay serve on the approved regulator a notice giving particulars of the documents or information provided or produced to it and the date on which it took possession.
- (4) Nothing in this regulation requires an approved regulator to produce or provide any information or document in respect of which a claim for confidentiality of communications could be maintained in legal proceedings.

ASH DENHAM
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
1st November 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision about complaints made about approved regulators. Approved regulators are professional or other bodies approved by the Scottish Ministers under section 7 of the Legal Services (Scotland) Act 2010 (“the 2010 Act”) to licence and regulate the provision of legal services by licensed legal service providers.

Section 79 of the 2010 Act sets out the process for dealing with complaints about approved regulators. Complaints about approved regulators are made to the Scottish Legal Complaints Commission (“the Commission”). The Commission is responsible for determining whether a complaint is about how an approved regulator has dealt with a regulatory complaint in respect of a licensed legal service provider and so one to which section 57E(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 applies or is frivolous, vexatious or totally without merit. Where a complaint does not fall into either of these categories, the complaint must be referred to the Scottish Ministers to investigate the complaint and, thereafter, notify the complainer and approved regulator of the outcome.

The function of the Scottish Ministers to investigate and notify the complainer and approved regulator can be delegated to the Commission under section 79(7) of the 2010 Act. Regulation 3 of the Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012 (SSI 2012/153) makes provision for notification to the Scottish Ministers by the Commission where the Commission upholds a complaint about an approved regulator.

Regulation 3 makes provision for dealing with multiple complaints against an approved regulator or regulators.

Regulation 4 allows the Scottish Ministers, or where the investigation function is delegated, the Commission to produce an interim written report which must be sent to the person making the complaint and the approved regulator.

Regulation 5 makes provision for the Scottish Ministers or, where the investigation function is delegated, the Commission to obtain information, documents or explanations from an approved regulator.

A partial Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government, Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG, and online at www.legislation.gov.uk.

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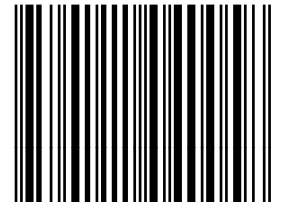
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