

2012 No. 154

LEGAL PROFESSION

**The Licensed Legal Services (Interests in Licensed Providers)
(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 sections 67(2)(a) and (4)(c) and (d) and 146(2)(a) of the Legal Services (Scotland) Act 2010^(a) and all other powers enabling them to do so.

In accordance with section 5 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 (Interests in Licensed Providers) (Scotland) Regulations 2012 and come into force on 2nd July 2012.

(2) In these Regulations—

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

Majority interests in licensed providers

2.—(1) For the purposes of section 49(1) of the Act (majority ownership), the qualifying investors in an entity are regarded as having at least a 51% stake in the total ownership or control of that entity only if, taken together, they—

- (a) are entitled to exercise, and control the exercise of, 51% or more of the voting or equivalent rights in the entity;
- (b) would be entitled to receive, if all of the income of the entity were to be distributed among the members, 51% or more of the amount so distributed; and
- (c) would be entitled to receive, if all of the assets of the entity were to be distributed among the members (for example, on the winding-up or dissolution of the entity), 51% or more of the amount so distributed.

(2) In the operation of paragraph (1)—

- (a) any rights that a person has as a loan creditor are to be disregarded; and

- (b) the references to “members” are to be construed as—
 - (i) in relation to a company, the holders of shares in the company;
 - (ii) in relation to a limited liability partnership, the members;
 - (iii) in relation to a partnership, the partners; and
 - (iv) in relation to any other body or association, the members of that body or association.

Interests of investors in licensed providers

3.—(1) For the purposes of the definition of “investor” in section 67(6) of the Act (more about investors), a person has ownership or control of the licensed provider or a material interest in it if the person—

- (a) is entitled to exercise, or control the exercise of, any voting or equivalent rights in the licensed provider;
 - (b) would be entitled to receive, if all of the income of the licensed provider were to be distributed among the members, any share of the amount so distributed; or
 - (c) would be entitled to receive, if all of the assets of the licensed provider were to be distributed among the members (for example, on the winding-up or dissolution of the licensed provider), any share of the amount so distributed.
- (2) In the operation of paragraph (1)—
- (a) any rights that a person has as a loan creditor are to be disregarded; and
 - (b) the references to “members” are to be construed as—
 - (i) in relation to a company, the holders of shares in the company;
 - (ii) in relation to a limited liability partnership, the members;
 - (iii) in relation to a partnership, the partners; and
 - (iv) in relation to any other body or association, the members of that body or association.

Interests in non-solicitor investors which are bodies

4.—(1) For the purposes of section 64(4) of the Act (factors as to fitness), a person may be regarded as having ownership or control of the body or a material interest in it if—

- (a) the person—
 - (i) is entitled to exercise, or control the exercise of, any voting or equivalent rights in the body;
 - (ii) would be entitled to receive, if all of the income of the body were to be distributed among the members, any share of the amount so distributed; or
 - (iii) would be entitled to receive, if all of the assets of the body were to be distributed among the members (for example, on the winding-up or dissolution of the entity), any share of the amount so distributed; or
 - (b) the person has ownership or control of another body or a material interest in it (determined in accordance with the same principles set out in sub-paragraph (a)) which has ownership or control of the body or a material interest in it (determined in accordance with the same principles set out in sub-paragraph (a)).
- (2) Paragraph 1(b) may continue to operate until no further bodies are determined to have ownership or control of the body or a material interest in it.
- (3) In the operation of paragraph (1)—
- (a) any rights that a person has as a loan creditor are to be disregarded; and
 - (b) the references to “members” are to be construed as—
 - (i) in relation to a company, the holders of shares in the company;
 - (ii) in relation to a limited liability partnership, the members;

- (iii) in relation to a partnership, the partners; and
- (iv) in relation to any other body or association, the members of that body or association.

Interests of exemptible investors in licensed providers

5.—(1) For the purposes of section 63(4) of the Act (exemption from fitness test), an investor has less than a 10% stake in the total ownership or control of the licensed provider only if the investor, and all associates of the investor, taken together—

- (a) are entitled to exercise, or control the exercise of, less than 10% of the voting or equivalent rights in the licensed provider;
- (b) would be entitled to receive, if all of the income of the licensed provider were to be distributed among the members, less than 10% of the amount so distributed; and
- (c) would be entitled to receive, if all of the assets of the licensed provider were to be distributed among the members (for example, on the winding-up or dissolution of the entity), less than 10% of the amount so distributed.

(2) Where, for the purposes of section 63 of the Act, the licensing rules of an approved regulator specify a threshold below 10%, in paragraph (1), all of the references to 10% are to be construed as references to the specified threshold.

(3) In the operation of paragraph (1)—

- (a) any rights that a person has as a loan creditor are to be disregarded; and
- (b) the references to “members” are to be construed as—
 - (i) in relation to a company, the holders of shares in the company;
 - (ii) in relation to a limited liability partnership, the members;
 - (iii) in relation to a partnership, the partners; and
 - (iv) in relation to any other body or association, the members of that body or association.

Associates

6.—(1) For the purposes of regulation 5, a person mentioned in paragraphs (2) or (3) is an associate of an investor.

(2) In relation to an individual, the persons are—

- (a) the spouse or civil partner of the individual;
- (b) a child or stepchild, if under 18, of the individual;
- (c) the trustee of any settlement under which the individual has a life interest (in England and Wales a life interest in possession); and
- (d) any entity of which the individual is a member and any subsidiary undertaking of that entity.

(3) In relation to an entity, the persons are—

- (a) any member of the entity; and
- (b) any parent undertaking or subsidiary undertaking of that entity.

(4) In paragraphs (2) and (3)—

- (a) the references to “member” are to be construed as—
 - (i) in relation to a company, a holder of shares in the company;
 - (ii) in relation to a limited liability partnership, a member;
 - (iii) in relation to a partnership, a partner; and
 - (iv) in relation to any other body or association, a member of that body or association;

- (b) “parent undertaking” and “subsidiary undertaking” have the meanings given to them in the Financial Services and Markets Act 2000^(a); and
- (c) “settlement” means any disposition or arrangement under which property is held on trust or subject to an equivalent obligation.

St Andrew’s House,
Edinburgh
17th May 2012

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

^(a) 2000 c.8. See section 420.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision relating to interests in licensed legal services providers for the purposes of Part 2 of the Legal Services (Scotland) Act 2010 (“the Act”).

Regulation 2

Section 49(1) of the Act provides that, in order for an entity to be eligible to be a licensed provider, the qualifying investors in it must have at least a 51% stake in the total ownership or control of the entity. Section 49(2) and (3) of the Act define the meaning of the term “qualifying investor”.

Regulation 2 provides that, for the purposes of section 49(1) of the Act, the qualifying investors will only be regarded as having at least a 51% stake in the total ownership or control of the entity if, taken together, they control at least 51% of the voting, income and capital rights in the entity.

Regulation 3

Section 67(6) of the Act defines an “investor” in a licensed provider as any person who has ownership or control of the licensed provider or a material interest in it.

Regulation 3 provides that, for the purposes of section 67(6) of the Act, a person has ownership or control of the licensed provider or a material interest in it if the person has any voting, income or capital rights in the licensed provider.

Regulation 4

Section 64(4) of the Act makes provision where a non-solicitor investor in a licensed provider is a body rather than an individual. It provides that the fitness of the persons having ownership or control of the body or any other material interest in it is relevant for the determination of whether the body itself is fit to have an interest in a licensed provider.

Regulation 4 provides that, for the purposes of section 64(4) of the Act, a person may be regarded as having ownership or control of the body or a material interest in it if the person has any voting, income or capital rights in the body. Regulation 4(1)(b) and (2) operates so that regard may also be had to the fitness of any persons having voting, income or capital rights in any other bodies which have an interest in that body and so on.

Regulations 5 and 6

Section 63(4) of the Act provides that an investor who has less than a 10% stake in the total ownership or control of a licensed provider is an exemptible investor. Section 63(3) of the Act, however, allows an approved regulator to specify, in its licensing rules, a threshold below 10%.

Regulation 5(1) provides that, for the purposes of section 63(4) of the Act, an investor in a licensed provider will only have less than a 10% stake in the total ownership or control of a licensed provider if the investor, and all associates of the investor, taken together, have less than 10% of the voting, income and capital rights in the licensed provider. Where, in its licensing rules, an approved regulator has specified a threshold below this percentage, regulation 5(2) provides that all references to 10% in regulation 5(1) are to be read as the specified threshold.

Regulation 6 sets out the meaning of associate for the purposes of regulation 5.