

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 2 – Licensed Legal Services Providers

Key duties and positions

Section 51 – Head of Legal Services

114. **Section 51** describes the position of Head of Legal Services, along with the requirements, duties and responsibilities associated with the role. This position must be filled in a licensed provider otherwise there is a risk that the licensed provider's licence will be revoked (see section 69). As stated above, the Head of Legal Services is responsible for ensuring compliance with regulatory objectives and professional principles. The Scottish Ministers have the power to make further provision about this position and its function by regulations (subsection (9)(a)).
115. Subsection (2) requires that the Head of Legal Services is to be currently qualified to practice as a solicitor and that he or she has a valid practising certificate, free of conditions. The relevant legislation on practising certificates and conditions is to be found in sections 4, 15(1) and 53(5) of the 1980 Act. The Scottish Ministers, following consultation with the Lord President, have a power to modify by regulations this subsection to allow an additional type of legally qualified person to become Head of Legal Services (subsections (9)(b) and (10)).
116. The Head of Legal Services is personally responsible for securing the licensed provider's compliance with the regulatory objectives, its adherence to the professional principles, and its fulfilment of its other duties, and to take such reasonable steps (such as issuing of instructions, establishing appropriate arrangements for training, monitoring and supervision of staff, and internal audit) for these purposes. The Head of Legal Services is also responsible for managing designated persons (subsections (4) to (6)). This section also provides for the action to be taken by the Head of Legal Services where it appears to him or her that the licensed provider is failing to fulfil its duties.
117. Subsection (8) provides that where any function falls to both the Head of Legal Services and the Head of Practice they are jointly and severally responsible for exercising the function. It will be noted that the Act gives a "whistle blowing duty" to both the Head of Legal Services (section 51(7)) and Head of Practice (section 52(6)), the difference being that the Head of Legal Services is required to report to the Head of Practice and the Head of Practice to the approved regulator. Another joint function is to ensure that designated persons in the licensed provider meet their professional obligations (sections 51(5)(b) and 52(4)(b)). Other joint functions may be provided for at a later date through the regulation-making power in sections 51(9) and 52(7).