

# LEGAL SERVICES (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Regulation of Licensed Legal Services**

#### *Chapter 2 – Licensed Legal Services Providers*

#### **Appointment to position etc.**

#### *Section 56 – Disqualification from position*

#### *Section 58 – Conditions for disqualification*

125. *Section 56(1)* indicates that sections 57 and 58 should be read in conjunction with section 56. Section 58 lists conditions which may or will result in the disqualification of someone from the positions of Head of Legal Services, or Head of Practice, or from being a member of the Practice Committee, or from being a designated person (see section 59 for the definition of a designated person).
126. In all cases, disqualification depends on a decision by the approved regulator that the matter which gives rise to the disqualification makes the person unsuitable for the appointment. In other words, although specific grounds in any of the conditions in section 58 may be met, the disqualification is never automatic since the approved regulator must be also satisfied that the person is unsuitable for the position. Further, before any disqualification occurs, the approved regulator must allow the licensed provider and the person to take such steps as are expedient or to make representations (section 57(3)).
127. *Section 56(2)* indicates that an approved regulator must disqualify a person from being Head of Practice or member of the Practice Committee if that person is insolvent and the approved regulator is satisfied that this makes that person unsuitable (the first condition in section 58(2)).
128. *Section 56(3)* indicates that an approved regulator must disqualify a person from being appointed as (or acting as) Head of Legal Services or Head of Practice or Practice Committee member if that person is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985 (or corresponding legislation) and the approved regulator is satisfied that this makes that person unsuitable (the second condition in section 58(3)). The approved regulator may disqualify someone from being a designated person on the same grounds.
129. *Section 56(4)* indicates that an approved regulator must disqualify a person from being appointed as (or acting as) Head of Legal Services, or Head of Practice, or Practice Committee member if that person is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 (or corresponding legislation) or has been disqualified by a court from holding a position of business responsibility and the approved regulator is satisfied that this makes that person unsuitable (the third condition in section 58(4)).

*These notes relate to the Legal Services (Scotland) Act 2010  
(asp 16) which received Royal Assent on 9 November 2010*

130. **Section 56(5)** indicates that an approved regulator must disqualify a person from being appointed as (or acting as) Head of Legal Services, or Head of Practice, or Practice Committee member if that person has been convicted of an offence involving dishonesty or has been fined for an offence a sum equivalent to level 4 on the standard scale or more, or has been sentenced to imprisonment for a term of 12 months or more and the approved regulator is satisfied that this makes that person unsuitable (the fourth condition in section 58(5)). The approved regulator may disqualify someone from being a designated person on the same grounds.
131. **Section 56(6)** indicates that an approved regulator may disqualify a person from being appointed as (or acting as) Head of Legal Services, or Head of Practice, or Practice Committee member, or designated person if that person has failed to fulfil any of his or her duties as stated in this Part of the Act, or has caused (or substantially contributed to a breach) of the terms or conditions relating to the licensed provider's licence, and the approved regulator is satisfied that this makes that person unsuitable (the fifth condition in section 58(6)).