

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 2 – Licensed Legal Services Providers

Professional practice etc.

Section 72 – Employing disqualified lawyer

157. **Section 72** applies to:

- a solicitor who has been struck off the roll or suspended from practice;
- a European or foreign lawyer who has been suspended or whose registration has been withdrawn;
- an individual practitioner (as defined in section 48(5)) who has been either struck off, or suspended or disqualified from practising; or
- an incorporated practice whose certificate of recognition has been revoked.

158. The licensed provider, knowing that a person is so disqualified, must not employ or pay that person (subsection (2)), unless the approved regulator has given permission so to do (subsection (3)), which it may do for a specified period and with conditions attached (subsection (4)). Subsections (5) and (6) provide for appeals to the Court of Session in certain situations. Subsection (7) provides that if a licensed provider knowingly and deliberately employs a disqualified person, or wilfully contravenes any conditions, its licence may be revoked or suspended.

Section 73 – Concealing disqualification

159. **Section 73** applies to the same persons as in section 72. It provides that a person (or incorporated practice) who has been disqualified will be guilty of an offence if, while disqualified, that person seeks or accepts employment by a licensed provider without informing it of the disqualification. The offence may lead to summary conviction and a fine not exceeding level 5 on the standard scale.

Section 74 – Pretending to be licensed

160. **Section 74** provides that a person commits an offence if that person pretends to be a licensed provider, or takes or uses any name, title, addition or description falsely implying that the person is a licensed provider. The offence may lead to summary conviction and a fine not exceeding level 5 on the standard scale.

Section 75 – Professional privilege

161. Legal professional privilege protects the confidentiality of communications between a solicitor and the solicitor's client that were conducted for the purpose of receiving legal advice, both oral and in writing, and of documents that are created for the main purpose of gathering evidence for use in legal proceedings. This section ensures that the clients of licensed providers have essentially the same legal professional privilege as they would have had if they had instructed a traditional sole practitioner, a law firm, or an incorporated practice. A communication made to or by a licensed provider in its provision of legal services or by a designated person acting in connection with those services and at the direction or under the supervision of a solicitor is to be treated as if it were a communication made by a solicitor for the purposes of disclosure. This reproduces the effect which exists under common law in relation to clients of solicitors and which exists in statute for incorporated practices and registered foreign lawyers in, respectively, sections 33A and 33B of the 1980 Act.