

Legal Services (Scotland) Act 2010 2010 asp 16

PART 2

REGULATION OF LICENSED LEGAL SERVICES

CHAPTER 2

LICENSED LEGAL SERVICES PROVIDERS

Appointment to position etc.

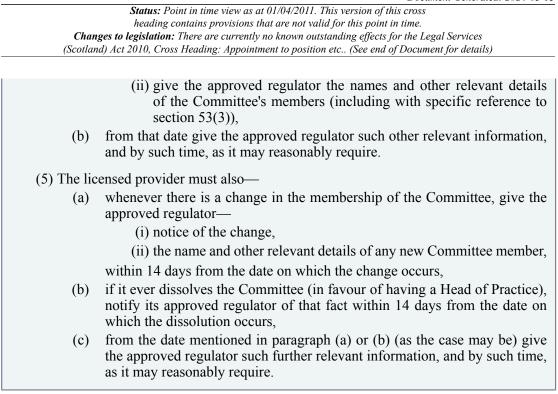
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54 Notice of appointment

- (1) Subsection (2) applies whenever a licensed legal services provider appoints a person as its—
 - (a) Head of Legal Services, or
 - (b) Head of Practice.

(2) The licensed provider must—

- (a) within 14 days from the date of the appointment—
 - (i) notify its approved regulator of that fact,
 - (ii) give the approved regulator the name and other details of the person appointed,
- (b) from that date give the approved regulator such further relevant information, and by such time, as it may reasonably require.
- (3) Subsections (4) and (5) apply where a licensed provider sets up a Practice Committee.
- (4) The licensed provider must—
 - (a) within 14 days from the date on which the Committee is set up—
 - (i) notify its approved regulator of that fact,



55 Challenge to appointment

- (1) An approved regulator may by written notice challenge the appointment by any of its licensed providers of a person ("P")—
 - (a) as its—
 - (i) Head of Legal Services, or
 - (ii) Head of Practice, or
 - (b) as a member of its Practice Committee.
- (2) A notice of a challenge under subsection (1)—
 - (a) requires to be given by the approved regulator within 14 days of the relevant notification to it under section 54(2), (4) or (5)(a),
 - (b) is to specify the grounds for the challenge.
- (3) A challenge under subsection (1) may be made only if the approved regulator—
 - (a) believes that P is (or may be)—
 - (i) ineligible, or
 - (ii) unsuitable,
 - for the appointment, or
 - (b) has other reasonable grounds for the challenge.
- (4) If the approved regulator determines (after making a challenge under subsection (1)) that the grounds for the challenge are made out, it may direct the licensed provider to rescind P's appointment.
- (5) Before giving a direction under subsection (4), the approved regulator must give the licensed provider and P 28 days (or such longer period as it may allow) to—
 - (a) make representations to it,
 - (b) take such steps as the licensed provider or P may consider expedient.
- (6) Practice and licensing rules respectively must—

Status: Point in time view as at 01/04/2011. This version of this cross heading contains provisions that are not valid for this point in time. Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Cross Heading: Appointment to position etc.. (See end of Document for details)

- (a) explain the basis on which P's suitability for the appointment is determinable,
- (b) provide that the licensed provider's licence is to be revoked or suspended if the licensed provider does not comply with a direction under subsection (4).
- (7) A licensed provider which or another person who is aggrieved by a direction under subsection (4) (or both jointly) may appeal against the direction—
 - (a) to the sheriff,
 - (b) within the period of 3 months beginning with the date on which the direction is given.
- (8) For the purpose of subsections (1) to (6), an example of things relevant as respects P's suitability for the appointment is whether P has a record of misconduct in any professional context.

Commencement Information

II S. 55 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

56 Disqualification from position

- (1) An approved regulator has the functions exercisable—
 - (a) under this section and section 57, and
 - (b) by reference to one or more of the conditions specified in section 58,

in relation to a person ("P") who holds within any of its licensed providers any of the posts to which those sections relate.

- (2) If the first condition is met in relation to P, the approved regulator must disqualify P from—
 - (a) appointment (or acting) as the Head of Practice,
 - (b) membership of a Practice Committee.
- (3) If the second condition is met in relation to P, the approved regulator—
 - (a) must disqualify P from—
 - (i) appointment (or acting) as the Head of Legal Services or Head of Practice,
 - (ii) membership of a Practice Committee,
 - (b) may disqualify P from being a designated person.
- (4) If the third condition is met in relation to P, the approved regulator must disqualify P from—
 - (a) appointment (or acting) as the Head of Legal Services or Head of Practice,
 - (b) membership of a Practice Committee.
- (5) If the fourth condition is met in relation to P, the approved regulator—
 - (a) must disqualify P from—
 - (i) appointment (or acting) as the Head of Legal Services or Head of Practice,
 - (ii) membership of a Practice Committee,
 - (b) may disqualify P from being a designated person.

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- (6) If the fifth condition is met in relation to P, the approved regulator may disqualify P from—
 - (a) appointment (or acting) as the Head of Legal Services or Head of Practice,
 - (b) membership of a Practice Committee,
 - (c) being a designated person.

Commencement Information

I2 S. 56 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

57 Effect of disqualification

- (1) A disqualification under section 56-
 - (a) may be—
 - (i) without limit of time, or
 - (ii) for a fixed period,
 - (b) extends so as to apply in relation to every licensed provider (including a licensed provider that is subject to the regulation of a different approved regulator).
- (2) Where a disqualification under section 56 is from being a designated person, the disqualification may be framed so as to be limited by reference to—
 - (a) particular activities, or
 - (b) activities carried out without appropriate supervision (for example, that of a senior solicitor).
- (3) Before disqualifying P under section 56, the approved regulator must give the licensed provider and P 28 days (or such longer period as it may allow) to—
 - (a) make representations to it,
 - (b) take such steps as the licensed provider or P may consider expedient.
- (4) Licensing rules must provide that the licensed provider's licence may be revoked or suspended if the licensed provider wilfully disregards a disqualification imposed under section 56.
- (5) Practice rules must—
 - (a) set procedure (which the approved regulator is to follow) for imposing a disqualification under section 56,
 - (b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that section.
- (6) A person who is disqualified under section 56 may appeal against the disqualification—
 - (a) to the sheriff,
 - (b) within the period of 3 months beginning with the date on which the disqualification is imposed.

Legal Services (Scotland) Act 2010 asp 16 Part 2 – Regulation of licensed legal services Chapter 2 – Licensed legal services providers Document Generated: 2024-03-13

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Commencement Information

I3 S. 57 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

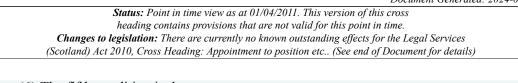
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58 Conditions for disqualification

- (1) This section applies for the purposes of section 56.
- (2) The first condition is that—
 - (a) P—
- (i) is subject to a trust deed granted by P for the benefit of P's creditors,
- (ii) is subject to an individual voluntary arrangement under the Insolvency Act 1986, to repay P's creditors,
- (iii) has been adjudged bankrupt and has not been discharged from bankruptcy, or
- (iv) has been sequestrated (that is, sequestration of P's estate has been awarded) and the sequestration has not been discharged, and
- (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.

(3) The second condition is that—

- (a) P is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 or corresponding Northern Ireland legislation, and
- (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.
- (4) The third condition is that—
 - (a) P—
 - (i) is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 or corresponding Northern Ireland legislation,
 - (ii) is disqualified by a court from holding, or otherwise has been removed by a court from, a position of business responsibility (for example, from being a director of a charity), and
 - (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.
- (5) The fourth condition is that—
 - (a) P—
 - (i) has been convicted of an offence involving dishonesty, or
 - (ii) in respect of an offence, has been fined an amount equivalent to level 4 on the standard scale or more (whether on summary or solemn conviction) or sentenced to imprisonment for a term of 12 months or more, and
 - (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.



(6) The fifth condition is that—

- (a) P (acting in the relevant capacity) has—
 - (i) failed in a material regard to fulfil any of P's duties under (or arising by virtue of) this Part, or
 - (ii) caused, or substantially contributed to, a material breach of the terms or conditions of the licensed provider's licence, and
- (b) the approved regulator is satisfied accordingly that P is unsuitable for the position.

(7) In subsections (3)(a) and (4)(a)(i), "Northern Ireland legislation" has the meaning given in section 24(5) of the Interpretation Act 1978.

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