



# 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.*

#### **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,
    - (ii) give the approved regulator the names and other relevant details of the Committee's members (including with specific reference to section 53(3)),

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- (b) from that date give the approved regulator such other relevant information, and by such time, as it may reasonably require.
- (5) The licensed provider must also—
- (a) whenever there is a change in the membership of the Committee, give the approved regulator—
    - (i) notice of the change,
    - (ii) the name and other relevant details of any new Committee member, within 14 days from the date on which the change occurs,
  - (b) if it ever dissolves the Committee (in favour of having a Head of Practice), notify its approved regulator of that fact within 14 days from the date on which the dissolution occurs,
  - (c) from the date mentioned in paragraph (a) or (b) (as the case may be) give the approved regulator such further relevant information, and by such time, as it may reasonably require.

## **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—
  - (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).

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- (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.

## **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.
- (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.

## **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.

## **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.

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- (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.