



# Legal Services (Scotland) Act 2010

## 2010 asp 16

### PART 2

#### REGULATION OF LICENSED LEGAL SERVICES

### CHAPTER 2

#### LICENSED LEGAL SERVICES PROVIDERS

#### *Key duties and positions*

#### **50 Key duties**

- (1) A licensed legal services provider must—
  - (a) have regard to the regulatory objectives,
  - (b) adhere to the professional principles,
  - (c) comply with—
    - (i) its approved regulator's regulatory scheme,
    - (ii) the terms and conditions of its licence.
- (2) A licensed provider must seek to ensure that every designated or other person who is—
  - (a) within the licensed provider, and
  - (b) subject to a professional code of conduct,complies with the code of conduct.
- (3) A licensed provider must have within it—
  - (a) a Head of Legal Services (see section 51), and
  - (b) either—
    - (i) a Head of Practice (see section 52), or
    - (ii) a Practice Committee (see section 53).
- (4) A licensed provider must ensure that the following positions are not left unoccupied—
  - (a) that of its Head of Legal Services, and
  - (b) that (as the case may be)—

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- (i) of its Head of Practice, or
- (ii) within its Practice Committee by virtue of section 53(3).

(5) However, the same person may (at the same time) be a licensed provider's Head of Legal Services and also its Head of Practice.

## **51 Head of Legal Services**

- (1) It is for a licensed provider to make such administrative arrangements as it considers appropriate in respect of its Head of Legal Services.
- (2) A person is eligible for appointment (and to act) as its Head of Legal Services only if the person is a solicitor who holds a valid practising certificate that is free of conditions (such as may be imposed under section 15(1)(b) or 53(5) of the 1980 Act).
- (3) But a person becomes disqualified from that position if the person is disqualified from practice as a solicitor by reason of having been—
  - (a) struck off (or removed from) the roll of solicitors, or
  - (b) suspended from practice.
- (4) A Head of Legal Services has the function of securing the licensed provider's—
  - (a) compliance with section 50(1)(a) and (b),
  - (b) fulfilment of its other duties under this Part so far as relevant in connection with its provision of legal services.
- (5) A Head of Legal Services is to manage the designated persons within the licensed provider with a view to ensuring that they—
  - (a) have regard to the Head's function under subsection (4),
  - (b) adhere to the professional principles,
  - (c) meet their professional obligations.
- (6) A Head of Legal Services is to take such reasonable steps as may be required for the purposes of subsection (4).
- (7) If it appears to a Head of Legal Services that the licensed provider is failing (or has failed) to fulfil any of its duties under this Part or another enactment, the Head is to report that fact to the Head of Practice.
- (8) Where (and to the extent that) under this section and section 52 a function falls to both—
  - (a) a Head of Legal Services, and
  - (b) a Head of Practice,
 they are jointly and severally responsible for exercising the function.
- (9) The Scottish Ministers may by regulations—
  - (a) make further provision about—
    - (i) Heads of Legal Services,
    - (ii) the functions of such Heads (in their capacity as such),
  - (b) modify subsection (2) so as to specify an additional type of legally qualified person (as an alternative to a solicitor as mentioned there).
- (10) Before making regulations under subsection (9), the Scottish Ministers must consult the Lord President.

## **52 Head of Practice**

- (1) It is for a licensed provider to make such administrative arrangements as it considers appropriate in respect of its Head of Practice.
- (2) A person is eligible for appointment (and to act) as its Head of Practice only if the person—
  - (a) has such qualifications, expertise and experience as are reasonably required, and
  - (b) in other respects, is fit and proper for the position.
- (3) A Head of Practice has the function of securing the licensed provider's—
  - (a) compliance with section 50(1)(c),
  - (b) fulfilment of its other duties under this Part.
- (4) A Head of Practice is to manage the designated and other persons within the licensed provider with a view to ensuring that they—
  - (a) have regard to the Head's functions under this Part,
  - (b) meet any professional obligations to which they are subject.
- (5) A Head of Practice is to take such reasonable steps as may be required for the purposes of subsection (3).
- (6) If it appears to a Head of Practice that—
  - (a) the licensed provider is failing (or has failed) to fulfil any of its duties under this Part or another enactment,
  - (b) an investor in the licensed provider is—
    - (i) failing (or has failed) to fulfil any of the investor's duties under this Part or another enactment, or
    - (ii) contravening (or has contravened) section 66(1) or (2),the Head is to report that fact to the licensed provider's approved regulator.
- (7) The Scottish Ministers may by regulations make further provision about—
  - (a) Heads of Practice,
  - (b) the functions of such Heads (in their capacity as such).
- (8) Before making regulations under subsection (7), the Scottish Ministers must consult the Lord President.

## **53 Practice Committee**

- (1) It is for a licensed provider—
  - (a) to decide whether to have a Practice Committee (instead of having a Head of Practice),
  - (b) if it has one, to make such administrative arrangements as it considers appropriate in respect of it.
- (2) A Practice Committee has the functions under this Part that would otherwise be exercisable by a Head of Practice (and the specification of any of those functions is to be read accordingly).
- (3) A Practice Committee is to have among its members a person who would be eligible for appointment as its Head of Practice (if there were one).

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- (4) The members of a Practice Committee are jointly and severally responsible as regards the Committee's functions.
- (5) The Scottish Ministers may by regulations make further provision about—
  - (a) Practice Committees,
  - (b) the functions of such Committees.
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.