

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 2 – Licensed Legal Services Providers

Key duties and positions

Section 52 – Head of Practice

118. *Section 52* describes the position of Head of Practice, along with the eligibility requirements, and the duties and responsibilities associated with the role. As stated above, the Head of Practice is responsible for broader compliance with the relevant regulatory scheme. This position must be filled in a licensed provider otherwise there is a risk that the licensed provider’s licence will be revoked (see section 69).
119. Subsection (2) gives details of the criteria that are required for a person’s appointment as its Head of Practice. Unlike the Head of Legal Services, no particular qualification is stipulated, although it is possible for the Scottish Ministers, following consultation with the Lord President, to add specific requirements by regulations under subsection (7). Such regulations may also make further provision about the functions of the Head of Practice.
120. Subsection (3) states the Head of Practice has the function of securing the licensed provider’s compliance with its approved regulator’s regulatory scheme and the terms and conditions of its licence. The duty is both to ensure compliance by the organisation as a whole, and to manage those working within the organisation to ensure they take account of the regulatory scheme. Whereas the Head of Legal Services managerial oversight is restricted to designated persons (i.e. those involved in the delivery of legal services – see section 59), the Head of Practice has oversight of everyone in a licensed provider.
121. Subsection (6) creates a “whistle blowing” duty. It provides that, if it appears to the Head of Practice that the licensed provider or any person having an interest in the licensed provider is failing (or has failed) to fulfil any of its duties, or that any such person is behaving (or has behaved) improperly in relation to the licensed provider or to any person within it, the Head of Practice must report the matter to the licensed provider’s approved regulator.