

LEGAL SERVICES (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Regulation of Licensed Legal Services

Chapter 2 – Licensed Legal Services Providers

Appointment to position etc.

Section 54 – Notice of appointment

123. This section contains requirements for notification by licensed providers to approved regulators of the details of the appointment of a Head of Legal Services and Head of Practice or Practice Committee, or any changes to these appointments.

Section 55 – Challenge to appointment

124. *Section 55* gives an approved regulator the power to challenge any appointment to the posts of Head of Legal Services, Head of Practice or as a member of a Practice Committee. The section sets down the specific grounds of challenge: a challenge can only be made if an approved regulator believes that person to be ineligible or unsuitable, or on other reasonable grounds. After allowing representations, it is open to an approved regulator to direct that an appointment be rescinded. Under subsection (7), the licensed provider or the aggrieved person may appeal to the sheriff within 3 months of the date of the direction.

Section 56 – Disqualification from position

Section 58 – Conditions for disqualification

125. *Section 56(1)* indicates that sections 57 and 58 should be read in conjunction with section 56. Section 58 lists conditions which may or will result in the disqualification of someone from the positions of Head of Legal Services, or Head of Practice, or from being a member of the Practice Committee, or from being a designated person (see section 59 for the definition of a designated person).
126. In all cases, disqualification depends on a decision by the approved regulator that the matter which gives rise to the disqualification makes the person unsuitable for the appointment. In other words, although specific grounds in any of the conditions in section 58 may be met, the disqualification is never automatic since the approved regulator must be also satisfied that the person is unsuitable for the position. Further, before any disqualification occurs, the approved regulator must allow the licensed provider and the person to take such steps as are expedient or to make representations (section 57(3)).
127. *Section 56(2)* indicates that an approved regulator must disqualify a person from being Head of Practice or member of the Practice Committee if that person is insolvent and the

approved regulator is satisfied that this makes that person unsuitable (the first condition in section 58(2)).

128. **Section 56(3)** indicates that an approved regulator must disqualify a person from being appointed as (or acting as) Head of Legal Services or Head of Practice or Practice Committee member if that person is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985 (or corresponding legislation) and the approved regulator is satisfied that this makes that person unsuitable (the second condition in section 58(3)). The approved regulator may disqualify someone from being a designated person on the same grounds.
129. **Section 56(4)** indicates that an approved regulator must disqualify a person from being appointed as (or acting as) Head of Legal Services, or Head of Practice, or Practice Committee member if that person is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986 (or corresponding legislation) or has been disqualified by a court from holding a position of business responsibility and the approved regulator is satisfied that this makes that person unsuitable (the third condition in section 58(4)).
130. **Section 56(5)** indicates that an approved regulator must disqualify a person from being appointed as (or acting as) Head of Legal Services, or Head of Practice, or Practice Committee member if that person has been convicted of an offence involving dishonesty or has been fined for an offence a sum equivalent to level 4 on the standard scale or more, or has been sentenced to imprisonment for a term of 12 months or more and the approved regulator is satisfied that this makes that person unsuitable (the fourth condition in section 58(5)). The approved regulator may disqualify someone from being a designated person on the same grounds.
131. **Section 56(6)** indicates that an approved regulator may disqualify a person from being appointed as (or acting as) Head of Legal Services, or Head of Practice, or Practice Committee member, or designated person if that person has failed to fulfil any of his or her duties as stated in this Part of the Act, or has caused (or substantially contributed to a breach) of the terms or conditions relating to the licensed provider's licence, and the approved regulator is satisfied that this makes that person unsuitable (the fifth condition in section 58(6)).

Section 57 – Effect of disqualification

132. Any disqualification under section 56 may be for an indefinite period or for a specified time period. In addition, designated persons may have a limit put on particular activities, or be prevented from carrying out certain activities without supervision. If someone is disqualified from a particular position in one licensed provider, that disqualification has the effect of disqualifying them from the same position in any other licensed provider, including a licensed provider which may operate under a different approved regulator.
133. Subsection (4) requires licensing rules to stipulate that a licensed provider's licence may be revoked or suspended if it wilfully disregards the disqualification of someone from the position of Head of Legal Services or Head of Practice, or from being a member of the Practice committee or from being a designated person.
134. Because of the potentially serious consequences of disqualification from a particular post, representations must be allowed before a disqualification occurs; there must be a procedure for review within the practice rules; and there is also a subsequent right of appeal to the sheriff.