



Legal Services (Scotland) Act 2010

2010 asp 16

PART 2

REGULATION OF LICENSED LEGAL SERVICES

CHAPTER 2

LICENSED LEGAL SERVICES PROVIDERS

Licensed providers

47 Licensed providers

- (1) For the purposes of this Part, a licensed legal services provider is a business entity which, through the designated and other persons within it—
 - (a) provides (or offers to provide) legal services—
 - (i) to the general public or otherwise, and
 - (ii) for a fee, gain or reward, and
 - (b) does so under a licence issued by an approved regulator in accordance with the approved regulator's licensing rules.
- (2) An entity is eligible to be a licensed provider only if it has within it, for the provision of legal services, at least one 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) A licensed provider may not be regulated by more than one approved regulator at the same time.
- (4) In this Part, a reference to a licensed provider is to a licensed legal services provider.

Commencement Information

II S. 47 in force at 1.4.2011 by S.S.I. 2011/180, art. 3, Sch.

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

48 Eligibility criteria

- (1) This section—
 - (a) applies for the purposes of licensing an entity as a licensed legal services provider under this Part,
 - (b) does so in conjunction with section 49.
- (2) The following are examples of arrangements which would make an entity eligible to be a licensed provider—
 - (a) the entity has within it—
 - (i) at least one solicitor as mentioned in section 47(2), and
 - (ii) at least one individual practitioner of another type,
 for the carrying out of the sort of legal work for which each is qualified,
 - (b) the entity has within it at least one solicitor as mentioned in section 47(2) but, through also having within it at least one person who is not a solicitor or other type of individual practitioner, additionally provides (or offers to provide)—
 - (i) other professional services, or
 - (ii) services of another kind,
 - (c) the entity has within it at least one solicitor as mentioned in section 47(2) but not every person who has ownership or control of the entity, or another material interest in it, is a solicitor (or a firm of solicitors) or an incorporated practice.
- (3) But an entity, to be eligible to be a licensed provider—
 - (a) need not be a body corporate or a partnership,
 - (b) requires, if it falls—
 - (i) under the ownership or control of another entity, or
 - (ii) within the structure of another entity,
 to be a separate part of the other entity or otherwise distinct from it.
- (4) For the avoidance of doubt, an entity is not eligible to be a licensed provider if it—
 - (a) consists of—
 - (i) a single solicitor practising under the solicitor's own name, or
 - (ii) a solicitor otherwise practising as a sole practitioner,
 - (b) is a firm of solicitors or an incorporated practice, or
 - (c) is a law centre as defined in section 65(1) of the 1980 Act.
- (5) In subsection (2)(a)(ii) and (b), a type of “individual practitioner” (apart from a solicitor) is—
 - (a) an advocate,
 - (b) a conveyancing or executry practitioner,
 - (c) a litigation practitioner, or
 - (d) a confirmation agent or will writer within the meaning of Part 3.
- (6) The Scottish Ministers may by regulations—
 - (a) make—
 - (i) provision specifying other categories of entity that are, or are not, eligible to be a licensed provider,
 - (ii) further provision about criteria for eligibility to be a licensed provider,
 - (b) modify—

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- (i) section 47(2) so as to specify an additional type of legally qualified person (as an alternative to a solicitor as mentioned there),
 - (ii) subsection (5) so as to add a type of legal practitioner to the list there.
- (7) Before making regulations under subsection (6)(b), the Scottish Ministers must consult every approved regulator.

Commencement Information

- I2** S. 48 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
- I3** S. 48 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

49 Majority ownership

- (1) An entity is eligible to be a licensed provider only if the qualifying investors in it (taken together) have at least a 51% stake in the total ownership or control of the entity.
- (2) For the purpose of subsection (1), a “qualifying investor” is—
 - (a) a solicitor investor, or
 - (b) an investor who is a member of another regulated profession.
- (3) In subsection (2)(b), a “regulated profession” is a profession the professional activities of whose members (and qualifications for membership of which) are, under statutory or administrative arrangements, regulated by a professional association.
- (4) Despite the generality of subsections (2)(b) and (3), the Scottish Ministers—
 - (a) are by regulations to specify in connection with those subsections what is, or is not, to be regarded as a regulated profession,
 - (b) may by regulations specify in connection with those subsections what is, or is not, to be regarded as a professional association, professional activities (or qualifications) or membership of a profession.
- (5) Before making regulations under subsection (4), the Scottish Ministers must—
 - (a) have the Lord President's agreement, and
 - (b) consult—
 - (i) the Law Society,
 - (ii) every approved regulator,
 - (iii) the OFT, and such other organisation (appearing to them to represent the interests of consumers in Scotland) as they consider appropriate,
 - (iv) such other person or body as they consider appropriate.

Commencement Information

- I4** S. 49 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
- I5** S. 49 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

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)—
 - (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.

Commencement Information

I6 [S. 50](#) in force at 2.7.2012 by [S.S.I. 2012/152](#), [art. 2](#), [Sch.](#)

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),

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- (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.

Commencement Information

- I7** S. 51 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
- I8** S. 51 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

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.

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

- (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.

Commencement Information

I9 S. 52 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, **Sch.**

I10 S. 52 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, **Sch.**

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).
- (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.

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Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

- (6) Before making regulations under subsection (5), the Scottish Ministers must consult the Lord President.

Commencement Information

- I11** S. 53 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
I12 S. 53 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

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)),
 - (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.

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

Commencement Information

I13 S. 54 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

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).
- (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.

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Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

Commencement Information

- I14** S. 55 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
I15 S. 55 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, 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.
- (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

- I16** S. 56 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.
I17 S. 56 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

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Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

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.

Commencement Information

I18 S. 57 in force at 1.4.2011 for specified purposes by [S.S.I. 2011/180, art. 3, Sch.](#)

I19 S. 57 in force at 2.7.2012 in so far as not already in force by [S.S.I. 2012/152, art. 2, Sch.](#)

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,

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- (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.

Commencement Information

I20 S. 58 in force at 2.7.2012 by [S.S.I. 2012/152](#), art. 2, [Sch.](#)

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

Designated persons

59 Designated persons

- (1) In this Part, a “designated person” within a licensed legal services provider is a person who is designated as such under subsection (2).
- (2) Designation under this subsection is written designation by the licensed provider to carry out legal work in connection with the licensed provider's provision of legal services.
- (3) For the purposes of subsection (2)—
 - (a) designation by the licensed provider means designation on its behalf by its Head of Legal Services or Head of Practice (who has the function accordingly),
 - (b) a person is eligible for designation only if the person is an employee of the licensed provider (or otherwise works within it under any arrangement),
 - (c) it is immaterial whether the person is—
 - (i) a member of a professional association, or
 - (ii) paid for the work.

Commencement Information

I21 S. 59 in force at 1.4.2011 by [S.S.I. 2011/180](#), art. 3, [Sch.](#)

60 Working context

- (1) A Head of Legal Services is, in furtherance of section 51(5)(b) and (c), responsible for ensuring that there is (by or under the direction of the Head) adequate supervision of the legal work carried out by the designated persons within the licensed provider.
- (2) Only a designated person within a licensed provider may carry out legal work in connection with its provision of legal services.
- (3) Nothing in this Part affects the operation of—
 - (a) section 32 of the 1980 Act or any other enactment which requires that a particular sort of legal work be carried out by an individual of a particular description (or in a particular way), or
 - (b) any rule of professional practice, conduct or discipline (whether for solicitors or otherwise) which properly so requires.

Commencement Information

I22 S. 60 in force at 2.7.2012 by [S.S.I. 2012/152](#), art. 2, [Sch.](#)

61 Listing and information

- (1) The Head of Practice of a licensed provider must—
 - (a) keep a list of the designated persons within the licensed provider, and

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- (b) give its approved regulator a copy of the list whenever the approved regulator requests it.
- (2) The Head of Practice must give its approved regulator such information about the designated persons within the licensed provider as the approved regulator may reasonably request.

Commencement Information

I23 S. 61 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

Non-solicitor investors

62 Fitness for involvement

- (1) An approved regulator must—
- (a) before issuing a licence to a licensed legal services provider, or renewing it, satisfy itself as to the fitness of every non-solicitor investor in the licensed provider for having an interest in the licensed provider,
 - (b) thereafter, monitor as it considers appropriate the investor's fitness in that regard.
- (2) Licensing rules must—
- (a) explain the basis on which a non-solicitor investor's fitness for having an interest in a licensed provider is determinable,
 - (b) provide that, where the approved regulator determines that the investor is unfit in that regard—
 - (i) a licence is not to be issued to the licensed provider (or renewed),
 - (ii) if issued, the licence is to be revoked or suspended.
- (3) But the approved regulator need not act as required by licensing rules made under subsection (2)(b) if, by such time as it may reasonably appoint, the licensed provider demonstrates to it that (following disqualification as required by section 65(1) or otherwise) the investor no longer has the relevant interest.
- (4) The approved regulator must, before making its final determination as to fitness, give the non-solicitor investor 28 days (or such longer period as it may allow) to—
- (a) make representations to it,
 - (b) take such steps as the investor may consider expedient.
- (5) A person who is determined as unfit under this section may appeal against the determination—
- (a) to the sheriff,
 - (b) within the period of 3 months beginning with the date on which the determination is made.

Commencement Information

I24 S. 62 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

I25 S. 62 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

63 Exemption from fitness test

- (1) Section 62(1) is subject to this section.
- (2) The approved regulator need not act as required by that section in relation to any exemptible investor in the licensed provider.
- (3) Licensing rules must explain—
 - (a) any circumstances in which the approved regulator proposes to rely on subsection (2),
 - (b) any threshold below the percentage specified in subsection (4) by reference to which it proposes to rely on subsection (2),
 - (c) where it proposes to rely on subsection (2), its reasons.
- (4) In subsection (2), an “exemptible investor” is an investor who has less than a 10% stake in the total ownership or control of the licensed provider.

Commencement Information

I26 S. 63 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

I27 S. 63 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

64 Factors as to fitness

- (1) This section applies for the purposes of section 62.
- (2) The following are examples of things relevant as respects a non-solicitor investor's fitness for having an interest in a licensed provider—
 - (a) the investor's—
 - (i) financial position and business record,
 - (ii) probity and character,
 - (iii) family, business or other associations (so far as bearing on character),
 - (b) whether—
 - (i) the investor has ever caused, or substantially contributed to, a material breach of the terms or conditions of any licensed provider's licence,
 - (ii) the investor's involvement in the licensed provider may (in the approved regulator's opinion) be detrimental to the observance of the regulatory objectives or adherence to the professional principles, or to the compliance with this Part or any other enactment, by any person or body,
 - (iii) the investor has ever contravened section 66(1) or (2) or there is (in the approved regulator's opinion) a significant risk that the investor will ever contravene that section.
- (3) A non-solicitor investor is to be presumed to be unfit for having an interest in a licensed provider if one or more of the following conditions is met—
 - (a) the first condition is that the investor—
 - (i) is subject to a trust deed granted by the investor for the benefit of the investor's creditors,
 - (ii) is subject to an individual voluntary arrangement under the Insolvency Act 1986, to repay the investor's creditors,

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- (iii) has been adjudged bankrupt and has not been discharged from bankruptcy, or
 - (iv) has been sequestrated (that is, sequestration of the investor's estate has been awarded) and the sequestration has not been discharged,
 - (b) the second condition is that the investor is subject to a bankruptcy restrictions order or undertaking under the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 or corresponding Northern Ireland legislation,
 - (c) the third condition is that the investor—
 - (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),
 - (d) the fourth condition is that the investor—
 - (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.
- (4) Where a non-solicitor investor is a body, it is relevant as respects the investor's fitness for having an interest in a licensed provider whether or not the persons having (to any extent)—
- (a) ownership or control of the body, or
 - (b) any other material interest in it,
- would (if they were investors in the licensed provider in their own right) be held to be fit in that regard.
- (5) In subsection (3)(b) and (c)(i), “Northern Ireland legislation” has the meaning given in section 24(5) of the Interpretation Act 1978.

Commencement Information

I28 S. 64 in force at 2.7.2012 by [S.S.I. 2012/152](#), art. 2, [Sch.](#)

65 Ban for improper behaviour

- (1) Where an approved regulator determines that a non-solicitor investor in a licensed provider has contravened section 66(1) or (2), the approved regulator must disqualify the investor from having an interest in the licensed provider.
- (2) A disqualification under subsection (1)—
- (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).

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- (3) Before disqualifying an investor under subsection (1), the approved regulator must give the investor 28 days (or such longer period as it may allow) to—
 - (a) make representations to it,
 - (b) take such steps as the investor may consider expedient.
- (4) Practice rules must—
 - (a) set procedure (which the approved regulator is to follow) for imposing a disqualification under subsection (1),
 - (b) allow for review (and lifting) by the approved regulator of a disqualification imposed by it under that subsection.
- (5) A person who is disqualified under subsection (1) 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.

Commencement Information

I29 S. 65 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

I30 S. 65 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

66 Behaving properly

- (1) A non-solicitor investor in a licensed provider must not (in that capacity) act in a way that is incompatible with—
 - (a) the regulatory objectives or the professional principles,
 - (b) the licensed provider's duties under section 50(1), or
 - (c) its—
 - (i) other duties under this Part,
 - (ii) duties under any other enactment.
- (2) A non-solicitor investor in a licensed provider must not (in that capacity)—
 - (a) interfere improperly in the provision of legal or other professional services by the licensed provider,
 - (b) in relation to any designated or other person within the licensed provider—
 - (i) exert undue influence,
 - (ii) solicit unlawful or unethical conduct, or
 - (iii) otherwise behave improperly.

Commencement Information

I31 S. 66 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

67 More about investors

- (1) Schedule 8 provides for other—
 - (a) requirements to which licensed legal services providers are subject,

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- (b) functions of approved regulators,
in relation to interests in licensed providers.
- (2) The Scottish Ministers may by regulations make further provision—
 - (a) relating to interests in licensed providers,
 - (b) for licensing rules in connection with persons who have an interest in a licensed provider.
- (3) The Scottish Ministers may by regulations—
 - (a) amend the percentage specified in section 63(4) and paragraph 4(3) of schedule 8,
 - (b) amend (by addition, elaboration or exception) a definition in subsection (6).
- (4) Regulations under subsection (2)(a) may (in particular)—
 - (a) impose requirements to which a licensed provider, or an investor in a licensed provider, is subject,
 - (b) specify criteria or circumstances by reference to which a non-solicitor investor is to be presumed, or held, to be fit (or unfit),
 - (c) set out—
 - (i) what amounts (to any extent) to ownership, control or another material interest,
 - (ii) what interest (or type) is relevant as regards a particular percentage stake in ownership or control,
 - (iii) by reference to a family, business or other association, what other interest (or type) also counts towards such a stake,
 - (d) for circumstances where an interest is held by a body, set out—
 - (i) what interest (or type) in the body counts towards the interest held by it,
 - (ii) the extent to which the interest in it so counts.
- (5) Before making regulations under subsection (3), the Scottish Ministers must have the Lord President's agreement.
- (6) In this Part—
 - (a) an “investor” in a licensed provider is any person who has (to any extent)—
 - (i) ownership or control of the licensed provider, or
 - (ii) any other material interest in it,
 - (b) a “non-solicitor investor” in a licensed provider is an investor who is not entitled to practise—
 - (i) as a solicitor, a firm of solicitors or an incorporated practice,
 - (ii) in England and Wales or Northern Ireland, as a solicitor (outwith the meaning for this Act), or
 - (iii) as a registered European or foreign lawyer,
 - (c) the reference to a “solicitor investor” in a licensed provider is to be construed accordingly.
- (7) In sections 62 to 66, this section and schedule 8, a reference to a licensed provider includes an applicant to become one.

Status: Point in time view as at 02/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

Commencement Information

- I32** S. 67(1)-(5) in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, **Sch.**
I33 S. 67(1)-(5) in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, **Sch.**
I34 S. 67(6)(7) in force at 1.4.2011 by S.S.I. 2011/180, art. 3, **Sch.**

Discontinuance of services

68 Duty to warn

- (1) Subsection (2) applies where a licensed legal services provider—
- (a) is in serious financial difficulty, or
 - (b) for any reason (except revocation or suspension of its licence under this Part)
 - (i) intends to stop providing legal services, or
 - (ii) is likely to become unable to continue providing legal services.
- (2) The licensed provider must—
- (a) notify (without delay) its approved regulator accordingly,
 - (b) provide the approved regulator with such relevant information as the approved regulator may require,
 - (c) take all reasonable steps to mitigate such disruption to its clients as is likely to result from the difficulty or (as the case may be) its ceasing to provide legal services.

Commencement Information

- I35** S. 68 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, **Sch.**

69 Inability to operate

- (1) Subsections (2) to (7) apply where—
- (a) through the application of section 48 or 49 or otherwise, a licensed provider is no longer eligible to remain as such,
 - (b) because of a vacancy within a licensed provider, the licensed provider has within it no person who is eligible to be (or act as) its—
 - (i) Head of Legal Services, or
 - (ii) Head of Practice,
 - (c) in respect of a licensed provider—
 - (i) a provisional liquidator, liquidator, receiver or judicial factor is appointed,
 - (ii) an administration or winding up order is made,
 - (iii) a resolution is passed by it for its voluntary winding up (except where that resolution is solely to facilitate reconstruction or amalgamation with another licensed provider), or
 - (d) for some other reason (except revocation or suspension of its licence under this Part), a licensed provider stops providing legal services.

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- (2) The licensed provider must—
 - (a) notify (without delay and no later than 7 days after the event referred to in subsection (1)) its approved regulator accordingly,
 - (b) provide the approved regulator with such information about the situation as the approved regulator may require.
- (3) The approved regulator must revoke the licensed provider's licence except where the approved regulator is satisfied that—
 - (a) the situation is temporary, and
 - (b) there are sufficient arrangements in place to safeguard the interests of the licensed provider's clients until such time as the situation is rectified.
- (4) Even if the exception mentioned in subsection (3) is made out, the approved regulator may suspend the licence pending rectification of the situation.
- (5) For the purpose of subsections (3) and (4), the approved regulator must review the situation every 14 days (or, if it so chooses, more frequently).
- (6) For so long as the licensed provider's licence is not revoked or suspended under subsection (3) or (4) in connection with the situation, the situation alone does not prevent the licensed provider from continuing (or recommencing) to provide legal services.
- (7) Where a licensed provider has ceased to exist—
 - (a) its functions under subsection (2)(a) and (b) fall to its former Head of Practice or (if unavailable) its former Head of Legal Services,
 - (b) if neither Head is available, its function under subsection (2)(b) falls to a person nominated by its approved regulator.
- (8) In this section, a reference to a licensed provider includes (as the context requires) a former licensed provider.

Commencement Information

I36 S. 69 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

70 Safeguarding clients

- (1) Subsections (2) and (3) apply where—
 - (a) a licensed provider—
 - (i) has given (or is required to give) notice to its approved regulator under section 68(2)(a) or 69(2)(a), or
 - (ii) has had (or is to have) its licence revoked or suspended under this Part, and
 - (b) the approved regulator has not informed it (or has not had an opportunity to do so) that the approved regulator is satisfied that it has made sufficient arrangements for the safeguarding of its clients' interests.
- (2) The licensed provider must—
 - (a) prepare—
 - (i) in the case of revocation, final accounts,

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Changes to legislation: There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2. (See end of Document for details)

- (ii) in the case of suspension, interim accounts, which (in particular) detail all sums held on behalf of clients,
 - (b) comply with any directions given under subsection (3).
- (3) The approved regulator may direct the licensed provider to take specified action (or refrain from doing something) if the approved regulator considers that to be necessary or expedient for safeguarding the interests of the licensed provider's legal services clients.
- (4) Directions given under subsection (3) may (in particular) require the licensed provider to make available to a relevant person or body any—
- (a) document or information (of whatever kind) held in the licensed provider's possession or control which—
 - (i) relates to, or is held on behalf of, a client of the licensed provider, or
 - (ii) relates to any trust of which the licensed provider (or one of the designated persons within it) is sole trustee or co-trustee only with other designated persons in the licensed provider,
 - (b) sum of money held by the licensed provider—
 - (i) on behalf of a client,
 - (ii) subject to any trust of the kind mentioned in paragraph (a)(ii).
- (5) For the purposes of subsection (4), a relevant person or body is—
- (a) the particular client,
 - (b) the approved regulator,
 - (c) a provider of legal services that is properly instructed by the licensed provider, or the approved regulator, to act in place of the licensed provider.
- (6) The Court of Session may, on an application by the approved regulator, make an order—
- (a) confirming that the licensed provider is required to comply with a direction given under subsection (3),
 - (b) varying the direction or imposing such conditions as the Court considers appropriate in the circumstances,
 - (c) that, without the leave of the Court, no payment be made by any bank, building society or other body named in the order out of any account (or any sum otherwise deposited) in the name of the licensed provider.
- (7) Before making such an order, the Court must—
- (a) give the licensed provider and any other person with an interest an opportunity to be heard,
 - (b) be satisfied that the direction or (as the case may be) freezing of an account represents an appropriate course of action in all the circumstances of the case.
- (8) The approved regulator may recover from the licensed provider any expenditure reasonably incurred by the approved regulator in consequence of its taking action under this section.
- (9) Where a licensed provider has ceased to exist, its functions under (or arising by virtue of) this section fall—
- (a) to its former Head of Practice or (if unavailable) its former Head of Legal Services,
 - (b) if neither Head is available, to a person nominated by its approved regulator.

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- (10) The Scottish Ministers may by regulations make further provision about the steps that are, in the circumstances within subsection (1), to be taken to safeguard the interests of clients of licensed providers.
- (11) In this section, a reference to a licensed provider includes (as the context requires) a former licensed provider.

Commencement Information

I37 S. 70 in force at 1.4.2011 for specified purposes by S.S.I. 2011/180, art. 3, Sch.

I38 S. 70 in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/152, art. 2, Sch.

71 Distribution of client account

- (1) Any sums of the kind to which section 42 of the 1980 Act applies that are held in a client account (as referred to in that section) kept by a licensed provider are, in any of the events mentioned in subsection (2A) of that section, to be distributed in the same way as they would if they were subject to that section.
- (2) For the purpose of subsection (1), any reference in that section to an incorporated practice is to be read as if it were a reference to the licensed provider.

Commencement Information

I39 S. 71 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

Professional practice etc.

72 Employing disqualified lawyer

- (1) Subsection (2) applies in relation to—
- (a) a person who has been struck off the roll of solicitors or suspended from practice as a solicitor,
 - (b) a person—
 - (i) who has been suspended from practice as a registered European lawyer or whose registration as a registered European lawyer has been withdrawn, or
 - (ii) who has been suspended from practice as a registered foreign lawyer or whose registration as a registered foreign lawyer has been withdrawn,
 - (c) a person who has been prohibited (including by reason of a disqualification or another removal of a right to provide services) from—
 - (i) practising as an advocate,
 - (ii) acting as a conveyancing or executry practitioner,
 - (iii) acting as a litigation practitioner, or
 - (iv) acting as a confirmation agent or will writer within the meaning of Part 3,
 - (d) a body whose certificate of recognition as an incorporated practice has been revoked.

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- (2) A licensed legal services provider must not employ or remunerate as a designated person—
- (a) the person while the person is so debarred (however described in subsection (1)), or
 - (b) the body while the revocation subsists.
- (3) But subsection (2) is inoperative in relation to the person or (as the case may be) body if the licensed provider has its approved regulator's written authority that it is so inoperative in the circumstances of the particular case.
- (4) Any authority under subsection (3) may be given—
- (a) for a specified period,
 - (b) with conditions attached.
- (5) A licensed provider may appeal to the Court of Session if it is aggrieved by—
- (a) the withholding of any such authority, or
 - (b) any conditions attached under subsection (4)(b).
- (6) On an appeal under subsection (5)—
- (a) the Court may direct the approved regulator on the matter as the Court considers appropriate,
 - (b) the Court's determination is final.
- (7) If a licensed provider wilfully contravenes—
- (a) subsection (2), or
 - (b) any conditions attached under subsection (4)(b),
- its approved regulator may revoke or suspend its licence.

Commencement Information

I40 S. 72 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

73 Concealing disqualification

- (1) Subsection (2) applies to—
- (a) a person who has been struck off the roll of solicitors or suspended from practice as a solicitor,
 - (b) a person—
 - (i) who has been suspended from practice as a registered European lawyer or whose registration as a registered European lawyer has been withdrawn, or
 - (ii) who has been suspended from practice as a registered foreign lawyer or whose registration as a registered foreign lawyer has been withdrawn,
 - (c) a person who has been prohibited (including by reason of a disqualification or another removal of a right to provide services) from—
 - (i) practising as an advocate,
 - (ii) acting as a conveyancing or executry practitioner,
 - (iii) acting as a litigation practitioner, or

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- (iv) acting as a confirmation agent or will writer within the meaning of Part 3.
- (2) The person is guilty of an offence if, while the person is so debarred (however described in subsection (1)), the person seeks or accepts employment by a licensed provider without previously informing it of the debarment.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Subsection (5) applies to a body whose certificate of recognition as an incorporated practice has been revoked.
- (5) The body is guilty of an offence if, while the revocation subsists, the body seeks or accepts employment by a licensed provider without previously informing it of the revocation.
- (6) A body which commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I41 S. 73 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

74 Pretending to be licensed

- (1) A person commits an offence if the person—
- (a) pretends to be a licensed provider, or
 - (b) takes or uses any name, title, addition or description implying falsely that the person is a licensed provider.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I42 S. 74 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

75 Professional privilege

- (1) Subsection (2) applies to any communication made to or by—
- (a) a licensed provider in the course of its acting as such in its provision of legal services for any of its clients,
 - (b) a designated person (apart from a solicitor or advocate) within the licensed provider who is acting—
 - (i) in connection with its provision of such legal services, and
 - (ii) at the direction, and under the supervision, of a solicitor.
- (2) The communication is, in any legal proceedings, privileged from disclosure as if the licensed provider or (as the case may be) the person had at all material times been a solicitor acting for the client.

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- (3) Subsection (4) applies to any special provision which—
- (a) is contained in an enactment or otherwise,
 - (b) relates to a solicitor, and
 - (c) concerns—
 - (i) the disclosure of information with respect to which a claim of professional privilege could be maintained, or
 - (ii) the production, seizure or removal of documents with respect to which such a claim could be maintained.
- (4) The provision has effect in relation to a licensed provider, and any designated person (apart from a solicitor) within a licensed provider, as it does in relation to a solicitor but with any necessary modifications.
- (5) This section is without prejudice to any other enactment or rule of law concerning professional or other privilege from disclosure (in particular, as applicable in relation to a solicitor).

Commencement Information

I43 S. 75 in force at 2.7.2012 by S.S.I. 2012/152, art. 2, Sch.

Status:

Point in time view as at 02/07/2012.

Changes to legislation:

There are currently no known outstanding effects for the Legal Services (Scotland) Act 2010, Chapter 2.