Status: *Point in time view as at 01/01/2015.*
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SCHEDULE 1

(introduced by section 1(2))

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Status

1 (1) The Commission is a body corporate.

(2) The Commission is not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

Membership of the Commission

2 (1) The Commission is to consist of the following members—

(a) a person to chair the Commission ("the chairing member"); and

(b) **[**[F1]8**]** other members.

(2) Members are appointed by the Scottish Ministers, having consulted the Lord President of the Court of Session ("the Lord President").

(3) The chairing member and **[**[F2]5**]** other members of the Commission must be members (in this schedule referred to as "non-lawyer members") who are not within any of the categories mentioned in sub-paragraph (6).

(4) There must be **[**[F3]3**]** members of the Commission (in this schedule referred to as "lawyer members") who are within any of the categories mentioned in sub-paragraph (6).

(5) Of the lawyer members 3 must have practised within any, or any combination, of the categories mentioned in sub-paragraph (6) for at least 10 years.

(6) The categories are—

(a) solicitors;

(b) advocates;

(c) conveyancing practitioners or executry practitioners;

(d) persons exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act.

(7) The Scottish Ministers may, subject to sub-paragraphs (8) and (9), by order amend—

(a) sub-paragraph (1)(b) to alter the number of other members referred to there;

(b) sub-paragraph (3) to alter the number of other members referred to there;

(c) sub-paragraph (4) to alter the number of members referred to there;

(d) sub-paragraph (5) to alter the number of lawyer members referred to there.

(8) The number of non-lawyer members must be greater than the number of lawyer members.

(9) The number of—

(a) non-lawyer members must be no fewer than 4 and no greater than 8;

(b) lawyer members must be no fewer than 3 and no greater than 7.

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Textual Amendments

F1 Word in Sch. 1 para. 2(1)(b) substituted (22.10.2014) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 (S.S.I. 2014/272), arts. 1, **2(a)**

F2 Word in Sch. 1 para. 2(3) substituted (22.10.2014) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 (S.S.I. 2014/272), arts. 1, **2(b)**

F3 Word in Sch. 1 para. 2(4) substituted (22.10.2014) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 (S.S.I. 2014/272), arts. 1, **2(c)**

Terms of appointment etc.

3 (1) Subject to sub-paragraph (2), each member is to be appointed for a period of 5 years.

(2) Appointments that constitute the Commission for the first time are to be in accordance with sub-paragraph (3).

(3) Each member is to be appointed for a period of not less than 4 years and not exceeding 6 years.

(4) A member—

(a) may by giving notice in writing to the Scottish Ministers resign office as a member of the Commission;

(b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.

(5) A person is, on ceasing to be a member, eligible for reappointment for a single further period; but not before a period of 3 years has elapsed.

4 In appointing members, the Scottish Ministers are to have regard to the desirability of including—

(a) persons who have experience of, and have shown capacity in—

(i) consumer affairs or complaints handling;

(ii) the provision of advice to members of the public on or in relation to such matters;

(b) persons who have experience of, and shown capacity in, the practice and provision of legal education and training;

(c) persons who have experience of, and shown capacity in—

(i) civil or criminal proceedings;

(ii) court procedures and practice generally;

(iii) the practice and provision of other legal services;

(iv) the monitoring of legal services;

(d) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Commission's functions.

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Removal of members

5 (1) Subject to sub-paragraph (2), the chairing member may, by written notice, remove a member from office if the chairing member is satisfied as regards any of the following matters—

(a) that the member becomes insolvent;

(b) that the member—

(i) has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission;

(ii) has been convicted of a criminal offence;

(iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

(2) The chairing member may not remove a member from office without the agreement of the Lord President of the Court of Session.

(3) The Lord President may, by written notice, remove the chairing member from office if the Lord President is satisfied as regards any of the matters mentioned in sub-paragraph (1)(a) or (b).

(4) For the purpose of sub-paragraph (1)(a) a member becomes insolvent on—

(a) the approval of a voluntary arrangement proposed by the member;

(b) being adjudged bankrupt;

(c) the member's estate being sequestrated;

(d) entering into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;

(e) granting a trust deed for creditors.

Disqualification from membership

6 (1) A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—

(a) a member of the House of Commons;

(b) a member of the Scottish Parliament;

(c) a member of the European Parliament.

(2) A person who has held any of the offices set out in sub-paragraph (1)(a) to (c) is also disqualified from appointment as a member of the Commission for a period of one year starting from the day on which the person last held any of those offices.

Remuneration, allowances and pensions for members

7 (1) The Commission is to pay to its members such remuneration as the Scottish Ministers may in each case determine.

(2) The Commission is to pay to its members such allowances as the Scottish Ministers may in each case determine.

(3) The Commission may, with the approval of the Scottish Ministers—

(a) pay or make arrangements for the payment;

(b) make payments towards the provision;

(c) provide and maintain schemes (whether contributory or not) for the payment,

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of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a member of the Commission, as the Commission may determine.

(4) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

Chief executive and other employees

8 (1) The Commission is to employ a chief executive.

(2) The chief executive is, with the approval of the Scottish Ministers, to be appointed by the Commission on such terms and conditions as the Commission may, with such approval, determine.

(3) The Commission may (subject to any directions given under sub-paragraph (4)) appoint such other employees on such terms and conditions as the Commission may determine.

(4) The Scottish Ministers may give directions to the Commission as regards the appointment of employees under sub-paragraph (3) (including the number of appointments) and as regards terms and conditions of their employment.

(5) The Commission must comply with directions given to it under sub-paragraph (4).

(6) The Commission may, with the approval of the Scottish Ministers—

(a) pay or make arrangements for the payment;

(b) make payments towards the provision;

(c) provide and maintain schemes (whether contributory or not) for the payment,

of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as the Commission may determine.

(7) The reference in sub-paragraph (6) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

Accountable officer

9 (1) The chief executive is the accountable officer for the purposes of this paragraph.

(2) The functions of the accountable officer are—

(a) signing the accounts of the expenditure and receipts of the Commission;

(b) ensuring the propriety and regularity of the finances of the Commission;

(c) ensuring that the resources of the Commission are used economically, efficiently and effectively;

(d) the duty mentioned in sub-paragraph (3).

(3) The duty is, where the accountable officer is required by the Commission to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—

(a) obtain written authority from the Commission before taking the action;

(b) send a copy of the authority as soon as possible to the Auditor General for Scotland.

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Procedure

10 (1) Subject to sub-paragraph (2)—

(a) any quorum of the Commission as contained in rules made under section 32(1) must consist of a greater number of non-lawyer members than lawyer members;

(b) the chairing member must, if present, chair meetings of the Commission or any committee of the Commission;

(c) if the chairing member is not available to be present at a meeting of the Commission or any committee of the Commission, the chairing member is to appoint another non-lawyer member to chair the meeting or committee;

(d) the chairing member has a casting vote; and any person appointed by that member under sub-sub-paragraph (c) has a casting vote for the purposes of that appointment;

(e) the validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.

(2) Sub-paragraph (1) does not apply to a determination committee established under paragraph 11(1)(a).

Committees

11 (1) The Commission—

(a) must establish one or more determination committees in accordance with rules made under section 32(1) for the purpose of exercising any functions mentioned in paragraph 13(2) which a determination committee is authorised by the Commission to exercise;

(b) may establish other committees for any other purposes relating to its functions.

(2) Subject to sub-paragraph (3)—

(a) the Commission is to determine the composition of its committees;

(b) any quorum of a committee as contained in rules made by virtue of section 32 must consist of a greater number of non-lawyer members than lawyer members;

(c) a committee of the Commission is to comply with any directions given to it by the Commission.

(3) Sub-paragraph (2) does not apply to a determination committee established under sub-paragraph (1)(a).

[[F4]11A(1) The Commission must establish an independent advisory panel.

(2) The functions of the panel are—

(a) to make recommendations to the Commission for improvements to the Commission's practice and procedures;

(b) to make suggestions to the Commission of topics for research connected to consumers;

(c) to express views on such matters relevant to the Commission's functions as the Commission directs.

(3) The panel must consist of—

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(a) at least two members who represent an organisation which appears to the Commission to promote the interests of consumers;

(b) at least one member who represents an organisation which appears to the Commission to promote equality;

(c) such other members as the Commission considers appropriate.**]**

Textual Amendments

F4 Sch. 1 para. 11A inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(16)** (with reg. 4)

General powers

12 (1) The Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, or appears to it to be conducive to, the exercise of the Commission's functions.

(2) In particular the Commission may—

(a) enter into contracts;

(b) with the consent of the Scottish Ministers, borrow money;

(c) with the consent of the Scottish Ministers, acquire and dispose of land;

(d) obtain advice or assistance from any person who, in the Commission's opinion, is qualified to give it.

(3) The Commission may pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the Commission may, with the approval of the Scottish Ministers, determine.

Delegation of functions

13 (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—

(a) the chief executive;

(b) any of its committees;

(c) any of its members;

(d) any of its other members of staff,

to exercise such of its functions (to such extent) as it may determine.

(2) The Commission may authorise—

(a) **[**[F5]a decision**]** under section 2(4)(a) **[**[F6]that**]** a complaint is frivolous, vexatious or totally without merit to be **[**[F7]taken**]** only by any of its committees or by one of the Commission's members;

(b) the function of deciding under section 3(1) whether—

(i) any element of a complaint is capable of being dealt with under a specified regulatory scheme;

(ii) the extent (if any) to which the Commission is able to take the preliminary steps referred to in section 2(4) in relation to the complaint and to deal with it under Part 1,

to be exercised only by one of the Commission's members;

(c) the function of deciding whether any element of a complaint is about the exercise of discretion by any Crown Counsel or procurator fiscal in relation

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to the prosecution of crime or investigation of deaths to be exercised only by one of the Commission's members;

(d) the following functions to be exercised only by a determination committee—

(i) the making of a determination under section 9(1);

(ii) the making of a determination or direction under section 10(2);

(iii) the making of any decision or the publication of a report under section 13;

(iv) the making of a decision under section 23(2);

(v) the making of a direction under section 24(6).

(3) The Commission may not authorise the exercise of any of the following functions under sub-paragraph (1)—

(a) the approval of annual reports and accounts;

(b) making of rules under section 32(1);

(c) determining the amount of the annual general levy and the complaints levy under section 29(1);

(d) the approval of any budget or other financial plan.

(4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.

Textual Amendments

F5 Words in Sch. 1 para. 13(2)(a) substituted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 144(c)(i)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

F6 Word in Sch. 1 para. 13(2)(a) substituted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 144(c)(ii)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

F7 Word in Sch. 1 para. 13(2)(a) substituted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 144(c)(iii)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

Location of office

14 (1) Subject to sub-paragraph (2), the Commission's determination of the location of the Commission's office premises is subject to the approval of the Scottish Ministers.

(2) The Scottish Ministers may direct the Commission as to the location of the Commission's office premises; and the Commission must comply with any such direction.

Accounts

15 (1) The Commission must—

(a) keep proper accounts and accounting records;

(b) prepare in respect of each financial year a statement of accounts; and

(c) send the statement of accounts to the Scottish Ministers,

in accordance with such directions as the Scottish Ministers may give.

(2) The Scottish Ministers must as soon as practicable—

(a) send the statement of accounts to the Auditor General for Scotland for auditing;

(b) lay the audited statement before the Parliament.

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(3) If requested by any person, the Commission is to make available at any reasonable time, without charge, in printed or electronic form, their audited accounts, so that they may be inspected by that person.

Reports

16 (1) As soon as practicable after the end of each financial year, the Commission must prepare a report on—

(a) the discharge of the Commission's functions during that year; and

(b) such action the Commission proposes to take in the following year in pursuance of its functions.

(2) The Commission must—

(a) send a copy of the report to the Scottish Ministers; and

(b) publish the report.

(3) In preparing and publishing the report the Commission must do so in accordance with such directions as the Scottish Ministers may give.

(4) The Scottish Ministers must as soon as practicable lay a copy of the report before the Parliament.

(5) The Commission may publish such other reports on matters relevant to the functions of the Commission as it considers appropriate.

Modifications etc. (not altering text)

C1 Sch. 1 para. 16(1) modified (1.10.2008) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008 (S.S.I. 2008/332), **art. 5**

C2 Sch. 1 para. 16(1) modified (1.10.2008) by The Legal Services Act 2007 (Transitional, Savings and Consequential Provisions) (Scotland) Order 2008 (S.I. 2008/2341), **art. 5**

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