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# SCHEDULE 3

*(introduced by section 32(2))*

## RULES AS TO COMMISSION'S PRACTICE AND PROCEDURE

### *Provision which must be included*

1 The rules as to the Commission's practice and procedure made under section 32(1) must include provision—

(a) regulating the making to the Commission of complaints under Part 1, including—

(i) when a complaint is to be regarded as made for the purposes of the Part;

(ii) the eligibility of persons to make such complaints on behalf of other persons (whether living or not);

(b) requiring the Commission not to—

(i) investigate a services complaint by virtue of section 9;

(ii) remit a conduct complaint to a relevant professional body under section 6(a) or 15(5)(a);

(iii) investigate a handling complaint by virtue of section 23,

unless the complainer has, for the purposes of Parts 1 and 2 of this Act, waived any right of confidentiality in relation to the matters to which the complaint relates;

(c) regulating the handling by it of complaints under Part 1;

(d) regulating the proposal by the Commission under section 9(2) of a settlement of a complaint and how an accepted settlement is to be constituted;

(e) requiring the Commission—

(i) where it considers it appropriate, to hold a hearing in relation to a complaint being dealt with by it under Part 1;

(ii) to decide whether such a hearing should be in public or private;

(f) as to—

(i) the evidence which may be required or admitted;

(ii) the extent to which it may be oral or written;

(iii) the consequences of a person's failure to produce any information or document which the person has been required to produce;

(g) as to when reasons are to be given (in circumstances where they are not required by this Act to be given)—

(i) for the Commission's determinations, directions, decisions or recommendations under Part 1;

(ii) in respect of what matters relating to the determinations, directions, decisions or recommendations;

(h) as to the membership of a determination committee, including in particular provision requiring—

(i) that any such committee has at least 3 members, of which the majority are non-lawyer members of the Commission;

(ii) that any such committee is chaired by a lawyer member of the Commission;

(iii) where the Commission has under section 9(2) proposed a settlement as respects a complaint and the settlement has not been

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accepted as mentioned in section 9(4), that the members of the committee determining the complaint under section 9(1) or making a determination or direction under section 10(2), by virtue of paragraph 13(2) of schedule 1, must not have been involved in any aspect of the investigation of the complaint (including deciding under section 2(4)(a) **[**[F1]that**]** the complaint was frivolous, vexatious or totally without merit) or the formulation or making by the Commission of the proposed settlement;

(i) requiring, where the Commission itself (and not one of its determination committees) determines a complaint under section 9(1) or makes a determination or direction under section 10(2) in relation to a complaint, that any member of the Commission involved in doing so must not have been involved in any aspect of the investigation of the complaint (including any matter referred to in paragraph 13(2)(a) to (c) of schedule 1) or the formulation or making by the Commission under section 9(2) of a proposed settlement as respects the complaint;

(j) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) on any amount of the annual general levy due to be paid to the Commission by a relevant professional organisation under section 27(2)(b) from the date the amount is due under the rules until it is paid;

(k) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) on any amount of the complaints levy due to the Commission from the date the amount is due under the rules until it is paid;

(l) subject to schedule 1, regulating its own meetings (including any quorum) and that of its committees.

**Textual Amendments**

**F1** Word in Sch. 3 para. 1(h)(iii) substituted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 144(d)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

*Provision which may in particular be included*

2 The rules as to the Commission's practice and procedure made under section 32(1) may in particular include provision—

(a) fixing time limits for the making of complaints against practitioners or relevant professional organisations or the stages of its investigation under Part 1;

(b) as to—

(i) extension of any time limit fixed by it under the rules;

(ii) the circumstances in which such extension may be made;

(c) as to the circumstances in which the Commission is not prevented by section 4(2) from taking the steps and further action referred to in that section in relation to a complaint which is made prematurely (within the meaning of section 4(4));

(d) as to the circumstances in which the Commission may rely on—

(i) with the agreement of the body concerned, findings in fact of a relevant professional organisation, the Scottish Solicitors' Discipline

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Tribunal or such other body as the Scottish Ministers may by order specify which has disciplinary functions;

(ii) previous findings in fact of the Commission;

(e) securing that a procedural defect in relation to—

(i) the making of;

(ii) the Commission dealing with,

a complaint under Part 1 is not to have an effect under the Part where the Commission considers that appropriate in the interests of fairness;

(f) as to the collection of the amount of the annual general levy to be paid to it by the relevant professional organisations and of any complaints levy due to it by practitioners;

(g) as to the recovery by it from the relevant professional organisations of the annual general levy due to be paid to it by them and from practitioners of any complaints levy due by them;

(h) as to the circumstances in which the Commission may—

(i) waive a portion of the annual general levy which would otherwise be payable under section 27(1);

(ii) refund any portion of an amount paid under that section;

(i) as to the circumstances in which the Commission may waive the requirement under section 28(1) to pay the complaints levy in any case;

(j) as to the calculation of the total amount of the annual general levy each relevant professional organisation is due to collect under section 27(2)(a) in respect of each financial year and notification of each such organisation of the amount so calculated by the Commission.

3 In this schedule—

"lawyer member" has the meaning given by paragraph 2(4) of schedule 1;

"non-lawyer member" has the meaning given by paragraph 2(3) of that schedule.

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