

Draft Order laid before the Scottish Parliament under section 79(3) of the Legal Profession and Legal Aid (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

LEGAL PROFESSION

The Legal Profession and Legal Aid
(Scotland) Act 2007 (Transitional, Savings
and Consequential Provisions) Order 2008

Made - - - - 2008

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 78 of the Legal Profession and Legal Aid (Scotland) Act 2007(1) and all other powers enabling them to do so.

In accordance with section 79(3) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008 and comes into force on the relevant date.

(2) In this Order—

“the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(2);

“the relevant date” means the date when section 2 of the Legal Profession and Legal Aid (Scotland) Act 2007 comes fully into force.

(1) 2007 asp 5.

(2) 1990 c. 40. Section 33 was amended by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), section 5(1); the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), schedule 4, paragraph 12(12); and S.S.I. 2000/121, regulation 37, schedule 2, part II, paragraph 6(2); section 34 was amended by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), section 1; the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), schedule 4, paragraph 12(13); and S.S.I. 2000/121, regulation 37, schedule 2, part II, paragraph 6(3). Sections 34A and 34B were inserted by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), sections 2 and 3 respectively. Schedule 3 was amended by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), sections 4 and 5(2) and S.I. 1999/1820, article 4, schedule 2, paragraph 101.

Section 33 of the 1990 Act

2.—(1) Paragraph (2) applies despite the repeal of section 33 of the 1990 Act by virtue of sections 195(5) and 210 of, and paragraph 2 of Schedule 20 and Schedule 23 to, the Legal Services Act 2007(3).

- (2) Subject to paragraph (3), section 33 of the 1990 Act continues to have effect where—
- (a) in relation to a complaint that a practitioner has been guilty of professional misconduct, the conduct giving rise to the complaint occurred before the relevant date;
 - (b) in relation to a complaint that a practitioner has provided inadequate professional services, those services have been provided in connection with a matter in which the practitioner was first instructed before the relevant date;
 - (c) in relation to a complaint that a practitioner has been guilty of professional misconduct and has provided inadequate professional services, those services have been provided in connection with a matter in which the practitioner was first instructed before the relevant date.

(3) This article has effect in relation to a complaint made during the period beginning with the relevant date and ending 2 years from that date.

The 1990 Act: the Scottish legal services ombudsman

3.—(1) Subject to paragraph (2), the following provisions of the 1990 Act are repealed—

- (a) section 34 (Scottish legal services ombudsman);
- (b) section 34A (ombudsman’s final report and recommendations);
- (c) section 34B (advisory functions of ombudsman); and
- (d) Schedule 3 (Scottish legal services ombudsman).

(2) Despite their repeal by virtue of paragraph (1), sections 34, 34A and 34B of, and paragraph 6 of Schedule 3 to, the 1990 Act continue to have effect in relation to a relevant complaint subject to the following modifications—

- (a) references to the Scottish legal services ombudsman are to be read as references to the Scottish Legal Complaints Commission; and cognate expressions are to be construed accordingly;
- (b) in section 34, omit subsections (1) and (9).

(3) For the purposes of this article, article 4 and article 7(2), “a relevant complaint” means—

- (a) a complaint made to the Scottish legal services ombudsman under section 34(1A) of the 1990 Act which has not completed the complaint process;
- (b) a complaint made to the Commission under section 34(1A) (as modified by paragraph (2)) which relates to the manner in which a complaint, in relation to which article 2(2) has effect, has been dealt with by the professional organisation concerned.

(4) Anything (including legal proceedings) which, immediately before the Scottish legal services ombudsman’s functions cease to be exercisable, is in the process of being done by or in relation to the ombudsman may, so far as it relates to a complaint mentioned in paragraph (3)(a), be continued by or in relation to the Commission.

(5) Anything done (or having effect as if done) by or in relation to the Scottish legal services ombudsman for the purposes of or in connection with a complaint mentioned in paragraph (3)(a), if in force at the time immediately before the ombudsman’s functions cease to be exercisable, has

(3) 2007 c. 29.

effect as if done by or in relation to the Commission in so far as that is required for continuing its effect on or after that time.

Legal Profession and Legal Aid (Scotland) Act 2007

4. In paragraph 16(1) of schedule 1 to the Legal Profession and Legal Aid (Scotland) Act 2007, reference to “the Commission’s functions” includes reference to the Commission’s functions in relation to a relevant complaint.

Access to records etc.

5. The Commission shall have access to such records and other documents in the possession or control of the Scottish legal services ombudsman as are necessary for the purpose of the Commission carrying out any of its functions.

Solicitors (Scotland) Act 1980

6. Section 51(3)(f) of the Solicitors (Scotland) Act 1980 (complaints to Tribunal)(4) is repealed.

The Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002

7.—(1) Subject to paragraph (2), the Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002(5) is revoked.

(2) Despite its revocation by virtue of paragraph (1), that Order continues to have effect in relation to a report made under section 34A of the 1990 Act, following the investigation of a relevant complaint.

St Andrew’s House,
Edinburgh
2008

A member of the Scottish Executive

(4) 1980 c. 46. Section 51(3) was amended by the 1990 Act, schedule 8, paragraph 29(9) and S.I. 1999/1042, article 4, schedule 2, paragraph 7(3).

(5) S.S.I. 2002/32.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provisions in consequence of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”).

Part 1 of the 2007 Act establishes the Scottish Legal Complaints Commission (“the Commission”) which is responsible for the investigation of complaints arising from the legal profession in Scotland. The Commission will, as from the relevant date (the date on which section 2 of the 2007 Act is fully commenced), replace the Scottish legal services ombudsman (“the ombudsman”). The office of the ombudsman will be abolished by an order under section 26(1) of the 2007 Act.

The ombudsman was, by virtue of sections 34 to 34B of, and schedule 3 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), responsible for the investigation of complaints about the handling of conduct complaints made under section 33 of that Act. Section 33 of the 1990 Act requires the professional organisation concerned to investigate complaints that a practitioner has been guilty of professional misconduct or has provided inadequate professional services. Section 33 is repealed by the Legal Services Act 2007

Article 2 of the Order provides that a conduct complaint can continue to be made under section 33 of the 1990 Act where the complaint concerns professional misconduct occurring or, in the case of a complaint about inadequate professional services, services provided in connection with a matter first instructed, before the relevant date. However, the provision only has effect in relation to a complaint made to the Commission during the period beginning with the relevant date and ending 2 years from that date.

Article 3(1) of the Order repeals the ombudsman’s functions as specified under the 1990 Act.

Article 3(2) of the Order makes provision to ensure that, as from the relevant date, the Commission will have responsibility for the investigation of a relevant complaint (as defined in article 3(3)) under the 1990 Act. Articles 3(4) and 3(5) provide respectively that, as necessary, anything done by or in relation to the ombudsman in relation to a relevant complaint, can continue to be done or have effect as if done, by or in relation to the Commission.

Article 4 of the Order requires the Commission to include in its annual report under paragraph 16(1) of Schedule 1 to the 2007 Act, provision about the discharge of its functions in relation to a relevant complaint.

Article 5 of the Order provides that the Commission has access to all records and documents held by the ombudsman as are necessary for the purpose of carrying out any of its functions.

Article 6 of the Order repeals section 51(3)(f) of the Solicitors (Scotland) Act 1980 which enables the ombudsman to report cases of professional misconduct to the Scottish Solicitors' Discipline Tribunal.

Article 7 of the Order revokes the Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002, subject to a saving provision so that the maximum compensation payment specified in that Order is the maximum amount which may be recommended by the Commission in any report which it makes under section 34A of the 1990 Act following the investigation of a relevant complain