

EXECUTIVE NOTE

DRAFT : THE LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT 2007 (TRANSITIONAL, SAVINGS AND CONSEQUENTIAL PROVISIONS)ORDER 2008 ORDER 2008

The above instrument was made in exercise of the powers conferred by section 78 of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”). The Order is subject to affirmative resolution procedure.

Policy Objectives

Part 1 of the 2007 Act establishes the Scottish Legal Complaints Commission (SLCC) which, as from the relevant date, will replace the Scottish Legal Services Ombudsman (SLSO) and will take over responsibility for the investigation of complaints arising from the legal profession in Scotland. The relevant date is the date when the SLCC’s new complaint functions under Part 1 of the 2007 Act (section 2 in particular) are commenced which will replace the complaint functions under the 1990 Act. Subject to a commencement order which will be made shortly, those provisions will not, however, be commenced until 1st October 2008 at the earliest.

The purpose of the instrument is to provide transition from the SLSO to the SLCC.

The order will allow:

- conduct complaints under section 33 of the 1990 Act to continue to be made to, and investigated by, the Law Society of Scotland or Faculty of Advocates, where the conduct giving rise to the complaint occurred before the relevant date or, in the case of a conduct complaint about inadequate professional services, those services have been provided in connection with a matter instructed before that date.
- existing handling complaints under section 34 of the 1990 Act (following the conclusion of a conduct complaint), as currently dealt with by the SLSO, to continue be dealt with by the SLCC under the 1990 Act.
- the SLCC to deal with handling complaints made under section 34 of the 1990 Act after the relevant date, following the conclusion of a conduct complaint as mentioned in the first bullet point. to

Any case not falling within the transitional provisions will, as from the relevant date, require to be dealt with under the 2007 Act. In any event, these transitional provisions will come to an end 2 years after the relevant date when all complaints will be dealt with under the 2007 Act.

In its annual report under paragraph 16(1) of schedule 1 to the 2007 Act, the SLCC will also be required to include provision about any complaints dealt with under these transitional provisions. Provision has been made so that the Scottish Ministers will meet the costs incurred by the SLCC when performing these transitional functions. Finally, the maximum compensation payment that can be recommended by the SLSO will continue to apply for those cases dealt with by the SLCC by virtue of this Order.

Consultation

The SL CC, SLSOmbudsman, Law Society of Scotland and the Faculty of Advocates have been consulted during the preparation of the instrument.

Financial Effect

The Scottish Government will meet the cost of those cases dealt with by the SLCC under the 1990 Act which are transferred to it by virtue of this Order. It is difficult to predict costs as this is demand led. The Government have advised that they will meet these costs-this continues the funding currently provided by the Government to the SLSO. The instrument has no financial effects on local government or on business.

Scottish Government Justice and Communities
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