

Draft Regulations 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

2014 No.

LEGAL PROFESSION

**The Scottish Legal Complaints Commission
(Modification of Duties and Powers) Regulations 2014**

Made - - - -

Coming into force - - *1st January 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 41(1) and (2) of the Legal Profession and Legal Aid (Scotland) Act 2007⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 41(1) of that Act, they have consulted the Commission, the relevant professional organisations and other persons they consider appropriate.

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) These Regulations may be cited as the Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014.

(2) These Regulations come into force on 1st January 2015.

(3) In these Regulations “the 2007 Act” means the Legal Profession and Legal Aid (Scotland) Act 2007.

Amendment of the 2007 Act

2.—(1) The 2007 Act is amended in accordance with this regulation.

(2) In section 2 (receipt of complaints: preliminary steps)—

(a) in subsection (1)—

(i) for “Where” substitute “This section applies where”,

(ii) omit the words from “, it must” to “mentioned in subsection (4)”,

(1) 2007 asp 5. Section 79(3) was amended by section 145(2) of the Legal Services (Scotland) Act 2010 asp 16.

- (b) after subsection (1) insert—
- “(1A) The Commission must, subject to subsection (3) and sections 3 and 4 and any provision in rules made under section 32(1) as to eligibility for making complaints—
- (a) determine whether the complaint constitutes—
- (i) a conduct complaint,
- (ii) a services complaint, and then
- (b) take the preliminary steps mentioned in subsection (4).”
- (c) after subsection (2) insert—
- “(2A) A determination by the Commission under subsection (1A)(a) must include a determination of whether (and if so to what extent) the complaint constitutes separate complaints falling within more than one of the categories and if so which of the categories.
- (2B) Where, for the purposes of subsection (1A)(a), it appears to the Commission that the complaint may constitute both—
- (a) a conduct complaint, and
- (b) a separate services complaint,
- it must consult, co-operate and liaise with the relevant professional organisation and have regard to any views expressed by the organisation on the matter before making a determination under subsection (1A)(a) as respects the complaint.
- (2C) A relevant professional organisation must co-operate and liaise with the Commission in relation to subsection (2B).”
- (3) In section 4 (complaint not made timeously or made prematurely)—
- (a) in subsection (2)—
- (i) after “not” in the first place where it occurs insert—
- “(a) make the determination referred to in section 2(1A)(a) in relation to it;”,
- (ii) the words “take the preliminary steps referred to in section 2(4) in relation to it, and” become paragraph (b),
- (iii) omit “need not” in the second place where it occurs,
- (iv) the remaining words become paragraph (c),
- (b) in subsection (3), after “subsection (1)” insert “or section 9A(3)”,
- (c) in subsection (4), after “subsection (2)” insert “or section 9A(2)”.
- (4) Omit section 5.
- (5) In section 6 (complaint determined to be conduct complaint)—
- (a) at the beginning insert—
- “(1) This section applies where, or to the extent that, the Commission—
- (a) determines under section 2(1A)(a) that a complaint is a conduct complaint, and
- (b) proceeds to determine under section 2(4) whether the complaint is frivolous, vexatious or totally without merit and determines that it is none of these things.”
- (b) the existing text becomes subsection (2),
- (c) in subsection (2)—
- (i) for the words from “Where” to “must” substitute “The Commission must”,

- (ii) after “determination” in the first place where it occurs insert “under section 2(1A)(a)”.
- (6) In section 7 (services complaint: notice)—
 - (a) at the beginning insert—
 - “(1) This section applies where, or to the extent that, the Commission—
 - (a) determines under section 2(1A)(a) that a complaint is a services complaint, and
 - (b) proceeds to determine under section 2(4) whether the complaint is frivolous, vexatious or totally without merit and determines that it is none of these things.”,
 - (b) the existing text becomes subsection (2),
 - (c) in subsection (2)—
 - (i) for the words from “Where” to “must” substitute “The Commission must”,
 - (ii) after “determination” in the first place where it occurs insert “under section 2(1A)(a)”.
- (7) In section 8 (services complaint: local resolution or mediation), for subsection (1) substitute—
 - “(1) This section applies where the Commission—
 - (a) determines under section 2(1A)(a) that a complaint by or on behalf of a person referred to in section 2(2)(b)(i) is a services complaint, and
 - (b) proceeds to determine under section 2(4) whether the complaint is frivolous, vexatious or totally without merit and determines that it is none of these things.”.
- (8) In each of sections 9 and 15 for “section 5(1)” in each place where it occurs substitute “section 2(1A)(a)”.
- (9) In section 9 (services complaint: Commission’s duty to investigate and determine)—
 - (a) in subsection (1) after “the Commission must, subject to” insert “this section and ”,
 - (b) after subsection (1) insert—
 - “(1A) The Commission may decide—
 - (a) to discontinue the investigation of a services complaint;
 - (b) to reinstate the investigation of a discontinued services complaint.
 - (1B) Where the Commission discontinues or reinstates the investigation of a services complaint it must give notice in writing to the complainer and the practitioner and specify the reasons for the decision.”.
- (10) After section 9 insert —

“9A Services complaint: further provision

- (1) This section applies where the Commission is investigating a services complaint under section 9(1) and becomes aware of new information from which it determines that the complaint—
 - (a) was made prematurely,
 - (b) was not made timeously, or
 - (c) is frivolous, vexatious or totally without merit.
- (2) If the complaint was made prematurely, the Commission need not take any further action in relation to it.
- (3) If the complaint was not made timeously, the Commission is not to take any further action in relation to it.

(4) If the complaint is frivolous, vexatious or totally without merit, the Commission must reject it.

(5) Where the Commission—

- (a) does not take any further action in relation to, or
- (b) rejects,

a complaint under this section it must give notice in writing to the complainer and the practitioner and specify the reasons for the decision.”.

(11) In sections 15(1) and (5)(a), 23(1), 33(b), 36(1)(a), (3)(a) and (5), 37(2) and 47(1), for “6(a)” substitute “6(2)(a)”.

(12) In section 17 (power to examine documents and demand explanations in connection with conduct or services complaints)—

- (a) in subsection (1) omit “5”,
- (b) in subsection (4) omit “5” in the first place where it occurs.

(13) In section 23 (handling by relevant professional organisations of conduct complaints: investigation by Commission)—

(a) for subsection (1) substitute—

“(1) The Commission may, subject to subsection (4), carry out such investigation as appears to it to be appropriate of a handling complaint.

(1A) In this Act, a “handling complaint” means a complaint which—

(a) relates to the manner in which a conduct complaint has been dealt with by a relevant professional organisation to which it has been remitted under section 6(2)(a) or 15(5)(a), and—

(b) is made—

(i) by or on behalf of the person by whom or on whose behalf the conduct complaint was made,

(ii) by the practitioner concerned in the conduct complaint.”,

(b) after subsection 2(b) insert—

“(c) to reinstate the investigation of a discontinued handling complaint.”,

(c) in subsection (3)—

(i) after “discontinue” insert “or reinstate”,

(ii) in paragraph (a), after “complaint” insert “(and, if made on behalf of another person, that other person)”,

(iii) after paragraph (a) insert—

“(aa) the other party to the conduct complaint to which the handling complaint relates;”,

(iv) omit paragraph (c),

(d) in subsection (6)—

(i) in paragraph (a), after “complaint” insert “(and, if made on behalf of another person, that other person)”,

(ii) after paragraph (a) insert—

“(aa) the other party to the conduct complaint to which the handling complaint relates;”,

(iii) omit paragraph (c),

- (e) in subsection (8)—
 - (i) in paragraph (a), after “complaint” insert “(and, if made on behalf of another person, that other person);”,
 - (ii) after paragraph (a) insert—
 - “(aa) the other party to the conduct complaint to which the handling complaint relates;”,
 - (iii) omit paragraph (c),
 - (f) after subsection (9) insert—
 - “(10) In this section and section 24, “the other party to the conduct complaint to which the handling complaint relates” is—
 - (a) in the case of a handling complaint made in accordance with subsection (1A)(b)(i), the practitioner concerned in the conduct complaint to which the handling complaint relates,
 - (b) in the case of a handling complaint made in accordance with subsection (1A)(b)(ii), the complainer in the conduct complaint to which the handling complaint relates.”.
- (14) In section 24 (investigation under section 23: final report and recommendations)—
- (a) in subsection (1)(b)(i), after “complaint” insert “(and, if made on behalf of another person, that other person);”,
 - (b) after subsection (1)(b)(i) insert—
 - “(ia) the other party to the conduct complaint to which the handling complaint relates;”,
 - (c) omit subsection (1)(b)(iii),
 - (d) in subsection (2)—
 - (i) in paragraph (a), after “complaint” in the first place where it occurs insert “(and, if made on behalf of another person, that other person);”,
 - (ii) in paragraph (e), after “complaint” in the first place where it occurs insert “(or the person on whose behalf it was made);”,
 - (iii) in paragraph (f), after “complaint” in the first place where it occurs insert “(or the person on whose behalf it was made);”,
 - (e) in subsection (5)—
 - (i) for “3 months” substitute “14 days”,
 - (ii) after “complaint” insert “(and, if made on behalf of another person, that other person);”,
 - (iii) for “the practitioner concerned” substitute “the other party to the conduct complaint to which the handling complaint relates”,
 - (iv) omit paragraph (a),
 - (f) in subsection (6)—
 - (i) in paragraph (a), omit “(b)”,
 - (ii) in paragraph (b), after “3 months” insert “(or such longer period as the Commission may determine under subsection (6A))”,
 - (g) after subsection (6) insert—
 - “(6A) If the relevant professional organisation considers that it is not practicable to comply wholly with a recommendation within 3 months, the Commission may determine a longer period within which the relevant professional organisation must so comply.

(6B) If the Commission determines a longer period under subsection (6A), the relevant professional organisation must notify—

- (a) the person who made the handling complaint (and, if made on behalf of another person, that other person),
- (b) the other party to the conduct complaint to which the handling complaint relates.”.

(15) In section 46 (interpretation of Part 1), in the entry for “handling complaint”, for “(1)” substitute “(1A)”.

(16) In schedule 1 (the Scottish Legal Complaints Commission), after paragraph 11 insert—

“**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—

- (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.”.

(17) In schedule 3 (rules as to Commission’s practice and procedure)—

(a) in paragraph 1(b)(ii) for “6(a)” substitute “6(2)(a)”,

(b) after paragraph 1(c) insert—

“(ca) specifying the grounds on which the Commission may discontinue the investigation of a complaint under section 9(1A)(a) or 23(2)(b) and reinstate a complaint under sections 9(1A)(b) or 23(2)(c);

(cb) as to the circumstances in which an investigation discontinued under section 9(1A)(a) or 23(2)(b) may cease to be able to be reinstated under sections 9(1A)(b) or 23(2)(c);”.

Consequential amendments

3.—(1) In sections 3A(5)(aa), 15(2)(i), 39A(10)(b), 40(5)(b) and 42ZA(1) of the Solicitors (Scotland) Act 1980(2), for “6(a)” substitute “6(2)(a)”.

(2) In section 34(2)(b) of the Legal Aid (Scotland) Act 1986(3), for “6(a)” substitute “6(2)(a)”.

(3) In sections 20(1), 20ZB(1) and 25(2)(c)(ii) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(4), for “6(a)” substitute “6(2)(a)”.

(2) 1980 c.46. Sections 3A, 15, 39A and 40 were amended by paragraph 1 of schedule 5 to the 2007 Act. Section 42ZA was inserted by section 53(2) of the 2007 Act.

(3) 1986 c.47. Section 34 was amended by paragraph 2 of schedule 5 to the 2007 Act.

(4) 1990 c.40. Sections 20 and 25 were amended by paragraph 3 of schedule 5 to the 2007 Act. Section 20ZB was inserted by section 54(2) of the 2007 Act.

Savings

4. The amendments in regulations 2 and 3 do not apply to complaints received by the Commission before these Regulations come into force.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) to adjust the duties and powers of the Scottish Legal Complaints Commission (“the Commission”) and to impose new duties and new powers on it.

Regulation 2(2) to (8) amends sections 2, 4 to 9 and 15 of the 2007 Act to rearrange the order in which the Commission has to categorise a complaint as conduct or services, decide whether to reject a complaint as frivolous, vexatious or totally without merit, and decide whether a complaint has not been made timeously or has been made prematurely.

Regulation 2(9) amends section 9 of the 2007 Act to give the Commission the ability to discontinue and reinstate services complaints.

Regulation 2(10) inserts a new section 9A into the 2007 Act which gives the Commission the ability to reject a complaint when it becomes aware of new information which suggests that it should have been rejected earlier.

Regulation 2(13) to (14) amends sections 23 and 24 of the 2007 Act to allow practitioners concerned in conduct complaints to make handling complaints about the manner in which a conduct complaint was dealt with by the relevant professional organisation.

Regulation 2(16) amends schedule 1 to the 2007 Act to require the Commission to establish an independent advisory panel.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Civil Law and Legal System Division, GW.15, St Andrew’s House, Regent Road, Edinburgh EH1 3DG.