

2007 No. 335 (C. 29)

LEGAL PROFESSION

**The Legal Profession and Legal Aid (Scotland) Act 2007
(Commencement No. 3) Order 2007**

Made - - - -

19th June 2007

The Scottish Ministers make the following Order in exercise of the powers conferred by section 82(2) of the Legal Profession and Legal Aid (Scotland) Act 2007(a).

Citation

1. This Order may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No. 3) Order 2007.

Appointed day

2. 30th July 2007 is the appointed day for the coming into force of the following provisions of the Legal Profession and Legal Aid (Scotland) Act 2007:—

- (a) section 67;
- (b) section 68; and
- (c) section 74.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
19th June 2007

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 30th July 2007 sections 67, 68 and 74 of the Legal Profession and Legal Aid (Scotland) Act 2007.

Section 67(2) amends section 4(2)(a) of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) to enable the Scottish Legal Aid Board to make payments out of the Legal Aid Fund to registered organisations.

Section 67(3) amends definitions contained in section 6 of the 1986 Act, amending “advice and assistance,” and qualifying “assistance by way of representation.”

Subsection (b) of section 67(3) inserts the definition of “adviser” into the 1986 Act.

Section 67(4) amends section 10 of the 1986 Act by adding appropriate references to “advisers” to its provisions which relate to the providers of advice and assistance and their responsibilities in respect of the financial limits which apply.

Subsection (b) of section 67(4) amends section 10(3) of the 1986 Act to provide that the cost of providing advice and assistance shall include the outlays incurred and the fees chargeable by the registered organisation which approved the adviser.

Section 67(5) amends section 12 of the 1986 Act in relation to fees and outlays, providing that registered organisations can receive payments from client contributions, expenses or, as the case may be, from property recovered or preserved and also that they can make claims to the Scottish Legal Aid Board for payment from the Legal Aid Fund in certain circumstances.

Section 67(6) inserts new sections 12A and 12B into the 1986 Act. New section 12A provides that a register of advice organisations is to be established and maintained by the Scottish Legal Aid Board. New section 12B enables regulations to be made which specify the categories of circumstances in which an adviser approved by a registered advice organisation may provide advice and assistance. The definitions of “advice and assistance” and “assistance by way of representation” are qualified in relation to advisers in that they may assist or represent a person only to the extent to which it is competent for them to do so.

Section 67(7) amends section 33 of the 1986 Act which deals with the payment of fees and outlays to solicitors and counsel. It inserts a new subsection (1A) which provides that fees and outlays incurred by advisers shall be paid to the registered organisation which had approved them.

Subsection (b) of section 67(7) amends section 33(2) of the 1986 Act providing that Scottish Ministers may also make provision in respect of fees and outlays of advisers.

Section 67(8) adds definitions of “adviser,” “adviser code,” “the register of advice organisations,” and “registered organisation” to section 41 of the 1986 Act.

Section 67(9) inserts a new Schedule 1A into the 1986 Act making further general provision regarding the register of advice organisations. It specifies: the process by which an advice organisation may apply for registration; the terms and conditions of the adviser code; monitoring and compliance; the procedures by which the Scottish Legal Aid Board may remove an organisation from the register and procedures for appeal against removal.

Section 68 amends section 4 of the 1986 Act in order that the Scottish Legal Aid Board will be able to use the Legal Aid Fund to provide grants.

It inserts a new section 4A, subsection (2) of which provides that grants can be made in respect of advice and assistance in relation to civil matters or civil legal aid work undertaken by a solicitor or counsel; or in respect of advice and assistance work in relation to civil matters undertaken by any adviser; or in respect of advice, assistance or representation in connection with matters of civil law which does not fall under the definitions of civil legal aid or advice and assistance in the 1986 Act.

Subsection (3) of new section 4A provides that grants can also be made in respect of work to facilitate, support and develop the provision of the matters set out in subsection (2).

Subsections (4) and (5) of new section 4A specify that Scottish Ministers must set a financial limit to the amount of grant over a specific period.

Subsections (6) to (11) and (14) of new section 4A set out the process by which the Scottish Legal Aid Board will prepare and publish a plan of the criteria it will apply when considering grant applications, that the plan is to be submitted to Scottish Ministers for approval, and that Ministers may approve such a plan subject to modification.

Subsections (12) and (13) of new section 4A specify that grant payments are to be made from the Legal Aid Fund. In order to prevent duplication, work which is funded by a grant will not also be funded under the advice and assistance or civil legal aid schemes.

Subsection (15) of new section 4A specifies that the term “person” insofar as it is used in section 4A, should be taken to include individuals acting as organisations as well as natural persons.

Section 74(1) amends section 4 of the 1986 Act to allow for payments to be made from the Legal Aid Fund in respect of expenses incurred by the Scottish Legal Aid Board in relation to the employment of solicitors who provide advice and assistance in civil matters, civil legal aid, or services mentioned in section 26(2) of the Legal Aid (Scotland) Act 1986.

Subsection (2) of section 74 amends section 26 of 1986 Act by repealing the word “local” in the definition of organisations with which the Scottish Legal Aid Board may employ solicitors to work in partnership and clarifying that advice giving need only be part of the functions of such organisations.

Subsection (3) of section 74 amends the 1986 Act to clarify the powers of the Scottish Legal Aid Board in relation to employing Solicitors. Subsection 3 also repeals sections 27(2) and (3) of the 1986 Act to prevent duplication of payments.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Act have been brought into force by commencement order made before the date of this Order:–

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Sections 69(1), (2)(a) and (4), 71, 73 and 76.	8th February 2007	2007/57
Section 1 so far as relating to paragraphs 1 to 7, 12 and 14 of schedule 1, sections 44 and 61, section 81 so far as relating to paragraph 3(10) of schedule 5, paragraphs 1 to 7, 12 and 14 of schedule 1, paragraph 3(10) of schedule 5.	19th March 2007	2007/140

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