
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 1st October 2008, 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 Section 33 is repealed by sections 195(5) and 210 of, and paragraph 2 of Schedule 20 and Schedule 23 to, the Legal Services Act 2007.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 1st October 2008. This article also provides for a complaint being made under section 33 of the 1990 Act that a practitioner has been guilty of professional misconduct and has provided inadequate professional services (where those services were first instructed before 1st October 2008). However, the provision only has effect in relation to a complaint made to the relevant professional organisation before 1st October 2010.

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 1st October 2008, 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(1) of the Order saves the provisions in the Solicitors (Scotland) Act 1980 (“the 1980 Act”) and the 1990 Act as they had effect before 1st October 2008 so far as is necessary to give full effect of the complaint processes for the purposes of section 33 of the 1990 Act, and article 4(2) saves the provisions for the purposes of any complaint which is made under the 1980 Act before 1st October 2008, including appeals and disciplinary proceedings.

Article 4(3) of the Order repeals section 51(3)(f) of the 1980 Act which enables the ombudsman to report cases of professional misconduct to the Scottish Solicitors’ Discipline Tribunal.

Article 5 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 6 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.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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 complaint.