

## **EXECUTIVE NOTE**

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

#### **SSI 2008 No. 332**

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, from 1 October 2008, 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. On 1 October 2008 the SLCC’s new complaint functions under Part 1 of the 2007 Act (section 2 in particular) are commenced and 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 1 October 2008..

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 Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“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 1 October 2008 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 1 October 2008, following the conclusion of a conduct complaint as mentioned in the first bullet point.

Any case not falling within the transitional provisions will, from 1 October 2008, require to be dealt with under the 2007 Act. These transitional provisions will come to an end on 30 September 2010 as all complaints will be dealt with under the 2007 Act from 1 October 2010.

The provisions of the Solicitors (Scotland) Act 1980 (“the 1980 Act”) and the 1990 Act relating to the current complaint processes will be saved so that they will continue to have effect as they were in force immediately before 1 October 2008. As well, for the purposes of any complaint which is made under the 1980 Act before 1 October 2008, the provisions of the 1980 Act are saved and will continue to have effect as they were in force immediately before 1 October 2008.

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 SLCC, SLSO, 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  
Constitution, Law and Courts Directorate

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