

2008 No. 2341

LEGAL SERVICES, SCOTLAND

**The Legal Services Act 2007 (Transitional, Savings and
Consequential Provisions) (Scotland) Order 2008**

Made - - - - - *29th August 2008*

Laid before Parliament *3rd September 2008*

Coming into force - - - *1st October 2008*

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 208(2) of the Legal Services Act 2007(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (Transitional, Savings and Consequential Provisions) (Scotland) Order 2008.

(2) This Order comes into force on 1st October 2008.

(3) In this Order —

- (a) “the 1980 Act” means the Solicitors (Scotland) Act 1980(b);
- (b) “the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(c);
- (c) “the 1999 Act” means the Immigration and Asylum Act 1999(d);
- (d) “the 2007 Act” means the Legal Services Act 2007;
- (e) a reference to a section, Schedule or paragraph of a Schedule by number alone is a reference to that section, Schedule or paragraph in the 2007 Act;
- (f) “the Commission” means the Scottish Legal Complaints Commission;
- (g) “the ombudsman” means the Scottish legal services ombudsman;
- (h) “relevant complaint” means—
 - (i) a complaint made to the ombudsman under section 34(1A) of the 1990 Act before 1st October 2008; and
 - (ii) a complaint made to the Commission under section 34(1A) of the 1990 Act which relates to the manner in which a professional organisation has handled a complaint in relation to which article 2(2) has effect.

(a) 2007 c. 29.

(b) 1980 c.46.

(c) 1990 c. 40. Section 33 was amended by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c.35), section 5(1); the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), schedule 4, paragraph 12(12); and S.S.I. 2000/121, regulation 37, schedule 2, part II, paragraph 6(2).

(d) 1999 c. 33

Section 33 of the 1990 Act

2.—(1) Paragraph (2) applies despite the repeal of section 33 of the 1990 Act by sections 195(5) and 210 of, and paragraph 2 of Schedule 20 and Schedule 23 to, the 2007 Act.

(2) Subject to paragraph (3), section 33 of the 1990 Act will continue to have effect in relation to the following circumstances—

- (a) a complaint that a practitioner has been guilty of professional misconduct where the conduct giving rise to the complaint first occurred before 1st October 2008;
- (b) a complaint that a practitioner has provided inadequate professional services where those services were provided in connection with a matter in which the practitioner was first instructed before 1st October 2008; and
- (c) a complaint that a practitioner has been guilty of professional misconduct and has provided inadequate professional services where the services were provided in connection with a matter in which the practitioner was first instructed before 1st October 2008.

(3) This article has effect only in relation to complaints made before 1st October 2010.

Sections 34, 34A and 34B of, and Schedule 3 to, the 1990 Act

3.—(1) Notwithstanding section 196(1) of the 2007 Act, sections 34, 34A and 34B of, and paragraph 6 of Schedule 3 to, the 1990 Act will continue to have effect in relation to a relevant complaint subject to the following modifications—

- (a) references to the ombudsman are to be read as references to the Commission and cognate expressions are to be construed accordingly; and
- (b) in section 34, omit subsections (1) and (9).

(2) Anything (including legal proceedings) which, immediately before the ombudsman's functions cease to be exercisable, is in the process of being done by or in relation to the ombudsman may, so far as it relates to a complaint described in article 1(3)(h)(i), be continued by or in relation to the Commission.

(3) Anything done (or having effect as if done) by or in relation to the ombudsman for the purposes of or in connection with a complaint described in article 1(3)(h)(i), if in force at the time immediately before the ombudsman's functions cease to be exercisable, has effect as if done by or in relation to the Commission in so far as that is required for continuing its effect on or after that time.

The 1980 Act

4. For the purposes of—

- (a) articles 2(2) and 3(1); and
- (b) any complaint made under the 1980 Act before 1st October 2008,

any provision of the 1980 Act in force immediately before 1st October 2008 will continue to have effect as at that date so far as necessary to give full effect to the complaint process (including appeals and disciplinary proceedings).

Legal Profession and Legal Aid (Scotland) Act 2007

5. In paragraph 16(1) of Schedule 1 to the Legal Profession and Legal Aid (Scotland) Act 2007(a), the references to “the Commission's functions” include the Commission's functions in relation to a relevant complaint.

(a) 2007 asp 5.

Access to records etc.

6. The Commission will have access to such records and other documents in the possession or control of the ombudsman as are necessary to carry out any of its functions.

The Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002

7. The Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002(a) will continue to have effect in relation to a report made under section 34A of the 1990 Act, following the investigation of a relevant complaint.

Signed by authority of the Lord Chancellor

29th August 2008

David Hanson
Minister of State
Ministry of Justice

(a) S.S.I. 2002/32.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of the Order provides that complaints about professional misconduct occurring before 1st October 2008 and inadequate professional services in connection with a matter instructed before 1st October 2008 will continue to be made under section 33 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”). Article 2 has effect only in relation to complaints made before 1st October 2010.

Article 3 provides that, as from 1st October 2008, the Commission will have responsibility for the investigation of complaints under section 34(1A) of the 1990 Act.

Article 4 saves the current provisions of the 1980 Act so far as necessary for the complaints process, including appeals and disciplinary proceedings.

Article 5 requires the Commission to include in its annual report information about how it has discharged the functions conferred on it by this Order.

Article 6 gives the Commission access to the records and documents held by the ombudsman for the purpose of carrying out the functions conferred on it by this Order.

Article 7 preserves the maximum limit on compensation which may be recommended in any report made under section 34A of the 1990 Act following the investigation of a relevant complaint.

This Order comes into force on 1st October 2008.

An impact assessment has not been prepared for this Order as no impact on the private or voluntary sectors is foreseen.

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