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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 332**

**LEGAL PROFESSION**

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

*Made* - - - - *30th September 2008*

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

The Scottish Ministers make the following Order in exercise of the powers conferred by section 78 of the Legal Profession and Legal Aid (Scotland) Act 2007(1) and all other powers enabling them to do so.

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) This Order may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008 and comes into force on 1st October 2008.

(2) In this Order—

“relevant complaint” has the meaning given in article 3(3);

“the 1980 Act” means the Solicitors (Scotland) Act 1980(2);

“the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(3);

“the ombudsman” means the Scottish legal services ombudsman.

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(1) 2007 asp 5.

(2) 1980 c. 46.

(3) 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); section 34 was amended by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), section 1; the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), schedule 4, paragraph 12(13); and S.S.I. 2000/121, regulation 37, schedule 2, part II, paragraph 6(3). Sections 34A and 34B were inserted by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), sections 2 and 3 respectively. Schedule 3 was amended by the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c. 35), sections 4 and 5(2) and S.I. 1999/1820, article 4, schedule 2, paragraph 101.

### **Section 33 of the 1990 Act**

2.—(1) Paragraph (2) applies despite the repeal of section 33 of the 1990 Act by virtue of sections 195(5) and 210 of, and paragraph 2 of Schedule 20 and Schedule 23 to, the Legal Services Act 2007<sup>(4)</sup>.

(2) Subject to paragraph (3), section 33 of the 1990 Act continues to have effect as it had effect immediately before 1st October 2008 where—

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

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

### **The 1990 Act: the ombudsman**

3.—(1) Subject to paragraph (2), the following provisions of the 1990 Act are repealed—

- (a) section 34 (Scottish legal services ombudsman);
- (b) section 34A (ombudsman’s final report and recommendations);
- (c) section 34B (advisory functions of ombudsman); and
- (d) Schedule 3 (Scottish legal services ombudsman).

(2) Despite their repeal by virtue of paragraph (1), sections 34, 34A and 34B of, and paragraph 6 of Schedule 3 to, the 1990 Act continue to have effect in relation to a relevant complaint subject to the following modifications—

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

(3) A “relevant complaint” means—

- (a) a complaint made to the ombudsman under section 34(1A) of the 1990 Act which has not completed the complaint process;
- (b) a complaint made to the Commission under section 34(1A) (as modified by paragraph (2)) which relates to the manner in which a complaint, in relation to which article 2(2) has effect, has been dealt with by the professional organisation concerned.

(4) 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 mentioned in paragraph (3)(a), be continued by or in relation to the Commission.

(5) 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 mentioned in paragraph (3)(a), 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.

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(4) 2007 c. 29.

### **The 1980 Act and 1990 Act**

4.—(1) For the purposes of articles 2(2) and 3(2), any provision of the 1980 Act and the 1990 Act in force immediately before 1st October 2008 has effect and continues in force as it had effect at that time, so far as is necessary to give full effect to the complaint processes (including appeals and disciplinary proceedings) provided for under those Acts.

(2) For the purposes of any complaint which is made under the 1980 Act before 1st October 2008, any provision of that Act in force immediately before 1st October 2008 has effect and continues in force as it had effect at that time, so far as is necessary to give full effect to any complaint process (including appeals and disciplinary proceedings) provided for under that Act.

(3) Section 51(3)(f) of the 1980 Act (complaints to Tribunal)(5) is repealed.

### **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, reference to “the Commission’s functions” includes reference to the Commission’s functions in relation to a relevant complaint.

### **Access to records etc.**

6. The Commission has access to such records and other documents in the possession or control of the ombudsman as are necessary for the purpose of the Commission carrying out any of its functions.

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

7.—(1) Subject to paragraph (2), the Scottish Legal Services Ombudsman (Compensation) (Prescribed Amount) Order 2002(6) is revoked.

(2) Despite its revocation by virtue of paragraph (1), that Order continues to have effect in relation to a report made under section 34A of the 1990 Act, following the investigation of a relevant complaint.

St Andrew’s House,  
Edinburgh  
30th September 2008

*KENNY MACASKILL*  
A member of the Scottish Executive

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(5) Section 51(3) was amended by the 1990 Act, Schedule 8, paragraph 29(9) and S.I. 1999/1042, article 4, schedule 2, paragraph 7(3).

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

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

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## 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.