



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

#### *Miscellaneous*

#### **41 Power by regulations to amend duties and powers of Commission**

- (1) The Scottish Ministers may, after consulting—
- the Commission;
  - the relevant professional organisations;
  - such other persons or groups of persons as they consider appropriate,
- by regulations modify the provisions of this Part for the purposes of adjusting the duties imposed, or the powers conferred, by it on the Commission (including imposing new duties or conferring new powers).
- (2) Regulations under subsection (1) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of that subsection (including modification of any enactment, instrument or document).

#### **42 Reports: privilege**

For the purposes of the law of defamation, the publication of any report under section 13(1), 23(8), 24, 35(2), 36(2) or paragraph 16 of schedule 1 is privileged unless the publication is proved to be made with malice.

#### **43 Restriction upon disclosure of information: Commission**

- (1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.

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- (2) The information is information—
  - (a) contained in a conduct complaint, services complaint or handling complaint;
  - (b) which is given to or obtained by the Commission or any person acting on its behalf in the course of, or for the purposes of—
    - (i) any consideration of such a complaint;
    - (ii) an investigation (including any report of such an investigation) into a services complaint or a handling complaint.
- (3) Such information may be disclosed—
  - (a) for the purpose of enabling or assisting the Commission to exercise any of its functions;
  - (b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.
- (4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, the Commission is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

#### **44 Exemption from liability in damages**

- (1) Neither the Commission nor any person who is, or is acting as, a member of the Commission or an employee of the Commission is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Commission's functions.
- (2) Subsection (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith;
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).

#### **45 Giving of notices etc. under Part 1**

- (1) Any notice which is required under this Part to be given in writing is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (2) Any notice which is required under this Part to be given to any person—
  - (a) is duly given—
    - (i) where the person is not an incorporated practice, if it is left at, or delivered or sent by post to, the person's last known place of business or residence;
    - (ii) where the person is an incorporated practice, if it is left at or delivered or sent by post to the practice's registered office;
    - (iii) where the person is a practitioner who is a firm of solicitors or an incorporated practice, if it is sent to the person by electronic means but only if the practitioner agrees to that means of sending;
    - (iv) where the person is an individual, if it is sent to the person by electronic means but only if the individual agrees to that means of sending;

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- (v) to any person, if it is given in such other manner as may be prescribed by regulations by the Scottish Ministers;
  - (b) if permitted by paragraph (a) to be sent, and sent, by electronic means is, unless the contrary is proved, deemed to be delivered on the next working day which follows the day on which the notice is sent.
- (3) Regulations under subsection (2)(a)(v) may—
- (a) in particular provide that notice required to be given to a person who is not an individual may be given by addressing or sending it to such person appointed by the person for that purpose or to such person falling within such other categories prescribed in the regulations as appear to the Scottish Ministers to be appropriate;
  - (b) make different provision for different purposes.
- (4) In subsection (2)(b), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

## 46 Interpretation of Part 1

- (1) In this Part, unless the context otherwise requires—
- “advocate” means a member of the Faculty of Advocates;
  - “annual general levy” has the meaning given by section 27(1);
  - “client”—
    - (a) (in relation to any matter in which the practitioner has been instructed) includes any person on whose behalf the person who gave the instructions was acting;
    - (b) where the practitioner is an employee of a person who is not a practitioner, includes (in relation to any matter in which the practitioner has been instructed by the employer) the employer;
  - “complainer” means the person who makes the complaint and, where the complaint is made by the person on behalf of another person, includes that other person;
  - “complaint” includes any expression of dissatisfaction;
  - “complaints levy” has the meaning given by section 28(1);
  - “the Commission” means the Scottish Legal Complaints Commission;
  - “conduct complaint” has the meaning given by section 2(1)(a);
  - “conveyancing practitioner” means a person registered under section 17 of the 1990 Act in the register of conveyancing practitioners;
  - “the Council” means the Council of the Law Society of Scotland;
  - “the court” means the Court of Session;
  - “employing practitioner” has the meaning given by section 4(4)(a);
  - “executory practitioner” means a person registered under section 18 of the 1990 Act in the register of executory practitioners;
  - “handling complaint” has the meaning given by section 23<sup>F1</sup>(1A)];
  - “inadequate professional services”—
    - (a) means, as respects a practitioner who is—

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- (i) an advocate, professional services which are in any respect not of the quality which could reasonably be expected of a competent advocate;
  - (ii) a conveyancing practitioner or an executry practitioner, professional services which are in any respect not of the quality which could reasonably be expected of a competent conveyancing practitioner or, as the case may be, a competent executry practitioner;
  - (iii) a firm of solicitors or an incorporated practice, professional services which are in any respect not of the quality which could reasonably be expected of a competent firm of solicitors or, as the case may be, a competent incorporated practice;
  - (iv) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, professional services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right;
  - (v) a solicitor, professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor;
  - (vi) [<sup>F2</sup>a registered European or foreign lawyer, professional services that are in any respect not of the quality which could reasonably be expected of a competent lawyer of that type;]
- (b) includes any element of negligence in respect of or in connection with the services,

and cognate expressions are to be construed accordingly;

“incorporated practice” has the meaning given by section 34(1A)(c) of the 1980 Act;

“practising certificate” has the meaning given by section 4 of the 1980 Act;

“practitioner” means—

- (a) an advocate and includes any advocate whether or not a member of the Faculty of Advocates at the time when it is suggested the conduct complained of occurred or the services complained of were provided and notwithstanding that subsequent to that time the advocate has ceased to be such a member;
- (b) a conveyancing practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;
- (c) an executry practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;
- (d) a firm of solicitors, whether or not since that time there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner or the firm has ceased to practise;
- (e) an incorporated practice, whether or not since that time there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) of the 1980 Act or has been wound up;

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- (f) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act and includes any such person, whether or not the person had acquired the right at that time and notwithstanding that subsequent to that time the person no longer has the right;
- (g) a solicitor, whether or not the solicitor had a practising certificate in force at that time and notwithstanding that subsequent to that time the name of the solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;
- (h) [<sup>F3</sup>a registered European or foreign lawyer, whether or not registered at that time and notwithstanding that subsequent to that time the lawyer's registration has ceased to have effect or the lawyer has stopped practising;]

[<sup>F4</sup> “ registered European or foreign lawyer ” is to be construed in accordance with section 65(1) of the 1980 Act; ]

“relevant professional organisation” means, in relation to a complaint as respects a practitioner who is—

- (a) an advocate, the Faculty of Advocates;
- (b) a conveyancing practitioner, an executry practitioner, a firm of solicitors or an incorporated practice, the Council;
- (c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, the body which made a successful application under section 25 of that Act and of which the person is a member;
- (d) a solicitor, the Council;
- (e) [<sup>F5</sup>a registered European or foreign lawyer, the Council;]

“the roll” means the roll of solicitors kept by the Council by virtue of section 7(1) of the 1980 Act;

“services complaint” has the meaning given by section 2(1)(b);

“the Society” means the Law Society of Scotland;

“solicitor” means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of the 1980 Act;

“unsatisfactory professional conduct” means, as respects a practitioner who is—

- (a) an advocate, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable advocate;
- (b) a conveyancing practitioner or an executry practitioner, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner or, as the case may be, a competent and reputable executry practitioner;
- (c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of [<sup>F6</sup>section 27 of the 1990 Act], professional conduct which is not of the standard which could reasonably be expected of a competent and reputable person exercising such a right;
- (d) a solicitor, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor;
- (e) [<sup>F7</sup>a registered European or foreign lawyer, conduct that is not of the standard which could reasonably be expected of a competent and reputable lawyer of that type;]

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but which does not amount to professional misconduct and which does not comprise merely inadequate professional services; and cognate expressions are to be construed accordingly.

- (2) For the avoidance of doubt, anything done by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not done in relation to any matter in which the Crown Counsel or procurator fiscal has been instructed by a client.
- (3) For the avoidance of doubt, the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not in itself capable of constituting professional misconduct or unsatisfactory professional conduct.
- (4) In subsections (2) and (3), “procurator fiscal” has the same meaning as in section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

#### Textual Amendments

- F1** Word in s. 46 substituted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(15)** (with reg. 4)
- F2** Words in s. 46(1) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 143(a)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F3** Words in s. 46(1) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 143(b)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F4** Words in s. 46(1) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 143(c)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F5** Words in s. 46(1) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 143(d)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F6** Words in s. 46(1) substituted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 144(b)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F7** Words in s. 46(1) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 143(e)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

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