

*Status: Point in time view as at 01/01/2015.*

**Changes to legislation:** *Legal Profession and Legal Aid (Scotland) Act 2007, Cross Heading: Provision which must be included is up to date with all changes known to be in force on or before 28 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### SCHEDULE 3 RULES AS TO COMMISSION'S PRACTICE AND PROCEDURE

#### *Provision which must be included*

- 1 The rules as to the Commission's practice and procedure made under section 32(1) must include provision—
- (a) regulating the making to the Commission of complaints under Part 1, including—
    - (i) when a complaint is to be regarded as made for the purposes of the Part;
    - (ii) the eligibility of persons to make such complaints on behalf of other persons (whether living or not);
  - (b) requiring the Commission not to—
    - (i) investigate a services complaint by virtue of section 9;
    - (ii) remit a conduct complaint to a relevant professional body under section [F16(2)(a)] or 15(5)(a);
    - (iii) investigate a handling complaint by virtue of section 23, unless the complainer has, for the purposes of Parts 1 and 2 of this Act, waived any right of confidentiality in relation to the matters to which the complaint relates;
  - (c) regulating the handling by it of complaints under Part 1;
  - [F2(ca)] specifying the grounds on which the Commission may discontinue the investigation of a complaint under section 9(1A)(a) or 23(2)(b) and reinstate a complaint under sections 9(1A)(b) or 23(2)(c);
  - (cb) as to the circumstances in which an investigation discontinued under section 9(1A)(a) or 23(2)(b) may cease to be able to be reinstated under sections 9(1A)(b) or 23(2)(c);]
  - (d) regulating the proposal by the Commission under section 9(2) of a settlement of a complaint and how an accepted settlement is to be constituted;
  - (e) requiring the Commission—
    - (i) where it considers it appropriate, to hold a hearing in relation to a complaint being dealt with by it under Part 1;
    - (ii) to decide whether such a hearing should be in public or private;
  - (f) as to—
    - (i) the evidence which may be required or admitted;
    - (ii) the extent to which it may be oral or written;
    - (iii) the consequences of a person's failure to produce any information or document which the person has been required to produce;
  - (g) as to when reasons are to be given (in circumstances where they are not required by this Act to be given)—
    - (i) for the Commission's determinations, directions, decisions or recommendations under Part 1;
    - (ii) in respect of what matters relating to the determinations, directions, decisions or recommendations;
  - (h) as to the membership of a determination committee, including in particular provision requiring—
    - (i) that any such committee has at least 3 members, of which the majority are non-lawyer members of the Commission;

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- (ii) that any such committee is chaired by a lawyer member of the Commission;
- (iii) where the Commission has under section 9(2) proposed a settlement as respects a complaint and the settlement has not been accepted as mentioned in section 9(4), that the members of the committee determining the complaint under section 9(1) or making a determination or direction under section 10(2), by virtue of paragraph 13(2) of schedule 1, must not have been involved in any aspect of the investigation of the complaint (including deciding under section 2(4)(a) [<sup>F3</sup>that] the complaint was frivolous, vexatious or totally without merit) or the formulation or making by the Commission of the proposed settlement;
- (i) requiring, where the Commission itself (and not one of its determination committees) determines a complaint under section 9(1) or makes a determination or direction under section 10(2) in relation to a complaint, that any member of the Commission involved in doing so must not have been involved in any aspect of the investigation of the complaint (including any matter referred to in paragraph 13(2)(a) to (c) of schedule 1) or the formulation or making by the Commission under section 9(2) of a proposed settlement as respects the complaint;
- (j) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) on any amount of the annual general levy due to be paid to the Commission by a relevant professional organisation under section 27(2)(b) from the date the amount is due under the rules until it is paid;
- (k) as to the charging of interest at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) on any amount of the complaints levy due to the Commission from the date the amount is due under the rules until it is paid;
- (l) subject to schedule 1, regulating its own meetings (including any quorum) and that of its committees.

#### Textual Amendments

- F1** Word in Sch. 3 para. 1(b)(ii) 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(17)(a)** (with reg. 4)
- F2** Sch. 3 para. 1(ca)(cb) inserted (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(17)(b)** (with reg. 4)
- F3** Word in Sch. 3 para. 1(h)(iii) substituted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), ss. **144(d)**, 150(2); S.S.I. 2011/180, art. 3, Sch.

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