

These notes relate to the Legal Profession and Legal Aid (Scotland) Act (asp 5) which received Royal Assent on 19 January 2007 (asp 5)

EXPLANATORY NOTES

LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT (ASP 5) WHICH RECEIVED ROYAL ASSENT ON 19 JANUARY 2007

INTRODUCTION

SUMMARY AND BACKGROUND TO THE ACT

COMMENTARY ON SECTIONS

PART 1 – THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Section 1: The Scottish Legal Complaints Commission

Section 2: Receipt of complaints: preliminary steps

Section 3: Existence of specified regulatory scheme

Section 4: Complaint not made timeously or made prematurely

Section 5: Determining nature of complaint

Section 6: Complaint determined to be conduct complaint

Section 7: Services complaint: notice

Section 8: local resolution or mediation

Section 9: Services complaint: Commission's duty to investigate and determine

Section 10: Commission upholds services complaint

Section 11: Fair and reasonable : matters to be taken into account by Commission

Section 12: Services complaint: notice where not upheld or upheld

Section 13: Services complaints: reports

Section 14: Determination under section 9(1) or taking of steps under section 10(2): effect in relation to proceedings

Section 15: Complaint appears during mediation or investigation to fall within different category

Section 16: Power to monitor compliance with directions under section 10(2)

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Section 17: Power to examine documents and demand explanations in connection with conduct or services complaints

Section 18: Power of the Commission to recover certain expenses

Section 19: Documents and information from third parties

Section 20: Enforcement of Commission direction under section 10(2)

Section 21: Appeals

Section 22: Appeals: supplementary provision

Section 23: Handling by relevant professional organisations of conduct complaints: investigation by Commission

Section 24: Investigation under section 23: final report and recommendations

Section 25: Failure to comply with recommendation

Section 26: Abolition of Scottish legal services ombudsman

Section 27: Annual general levy

Section 28: Complaints levy

Section 29: Amount of levies and consultation

Section 30: Grants or loans by the Scottish Ministers

Section 31: Guarantees

Section 32: Duty of Commission to make rules as to practice and procedure

Section 33: Duty of relevant professional organisations to forward complaints to Commission

Section 34: Commission's duty to provide advice

Section 35: Services complaints: monitoring, reports, protocols and information sharing

Section 36: Conduct complaints: monitoring, reports, guidance and recommendations

Section 37: Obtaining of information from relevant professional organisations

Section 38: Efficient and effective working

Section 39: Monitoring effectiveness of guarantee funds etc.

Section 40: How practitioners deal with complaints: best practice notes

Section 41: Power by regulations to amend duties and powers of Commission

Section 42: Reports: privilege

Section 43: Restriction upon disclosure of information: Commission

These notes relate to the Legal Profession and Legal Aid (Scotland) Act (asp 5) which received Royal Assent on 19 January 2007 (asp 5)

Section 44: Exemption from liability in damages

Section 45: Giving of notices etc. under Part 1

Section 46: Interpretation of Part 1

PART 2 – CONDUCT COMPLAINTS: OTHER MATTERS

Section 47: Conduct complaints: duty of relevant professional organisations to investigate etc.

Section 48: Conduct complaints and reviews: power of relevant professional organisations to examine documents and demand explanations

Section 49: Conduct complaints: financial impropriety

Section 50: Power of relevant professional organisations to recover certain expenses

Section 51: Powers in relation to documents and information from third parties

Section 52: Restriction upon disclosure of information: relevant professional organisations

Section 53: Unsatisfactory professional conduct: solicitors

Section 42ZA of the 1980 Act

Section 42ZB of the 1980 Act

Section 53ZA of the 1980 Act

Section 53ZB of the 1980 Act

Section 53ZC of the 1980 Act

Section 54A of the 1980 Act

Section 55A of the 1980 Act

Section 54: Unsatisfactory professional conduct: conveyancing or executry practitioners etc.

Section 20ZA of the 1990 Act

Section 20ZB of the 1990 Act

Section 20ZC

Section 20B of the 1990 Act

Section 20C of the 1990 Act

Section 20D of the 1990 Act

Section 20E of the 1990 Act

Section 55: Report by Commission to Council under section 10(2)(e)

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Sections 42ZC of the 1980 Act and 20ZD of the 1990 Act

Sections 42ZD of the 1980 Act and 20ZE of the 1990 Act

Section 56: Powers to fine and award compensation for professional misconduct etc

Section 57: Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct

PART 3 – LEGAL PROFESSION: OTHER MATTERS

Section 58: Constitution of Scottish Solicitors' Discipline Tribunal

Section 59: Scottish Solicitors Guarantee Fund: borrowing limit

Section 60: Safeguarding interests of clients

Section 61: Offence for unqualified persons to prepare certain documents

Section 62: Notaries public to be practising solicitors

Section 63: Regulation of notaries public

PART 4 – LEGAL AID

Section 64: Criminal legal aid in solemn proceedings

Section 65: Criminal legal aid: conditions and reviews

Section 66: Criminal Legal Assistance Register: removal of name following failure to comply with code

Section 67: Register of advice organisations: advice and assistance

Section 68: Scottish Legal Aid Board: grants for certain purposes

Section 69: Financial limit: advice and assistance

Section 70: Further provision in relation to the Fund: advice and assistance

Section 71: Availability of civil legal aid for defamation or verbal injury

Section 72: Civil legal aid: conditions and reviews

Section 73: Availability of legal aid: Judicial Committee of the Privy Council

Section 74: Solicitors employed by the Scottish Legal Aid Board

Section 75: Contributions, and payments out of property recovered

Section 76: Regulations under section 36 of the 1986 Act

PART 5 – GENERAL

Section 77: Advice, services or activities to which Act does not apply

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Consumer credit activities

Insolvency

Financial Services - 1986 Act

Immigration services

Financial services - 2000 Act

Section 78: Ancillary provision

Section 79: Regulations or orders

Schedule 1—The Scottish Legal Complaints Commission

Schedule 2—Further powers of Commission under sections 17 or 37

Schedule 3—Rules as to Commission's practice and procedure

Schedule 4: Further powers of relevant professional organisations under section 48

Schedule 5—Minor and consequential modifications

PARLIAMENTARY HISTORY