

2009 No. 17

LEGAL PROFESSION

**The Legal Profession and Legal Aid (Scotland) Act 2007
(Transitional Provision) Order 2009**

<i>Made</i> - - - -	<i>21st January 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>22nd January 2009</i>
<i>Coming into force</i> - -	<i>13th February 2009</i>

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(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional Provision) Order 2009 and comes into force on 13th February 2009.

Disclosure of information by the Scottish Legal Aid Board

2. For the purposes of section 34(2)(b) of the Legal Aid (Scotland) Act 1986(b), any complaint alleging professional misconduct being investigated under section 33(1)(a) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(c) is deemed to be a conduct complaint remitted by the Scottish Legal Complaints Commission under section 6(a) of the Legal Profession and Legal Aid (Scotland) Act 2007.

KENNY MacASKILL
A member of the Scottish Executive

St Andrew's House,
Edinburgh
21st January 2009

(a) 2007 asp 5.
(b) 1986 c.47. Section 34(2)(b) was amended by the Legal Profession and Legal Aid (Scotland) Act 2007, section 81 and paragraph 2(5)(b) of schedule 5.
(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). It was repealed by the Legal Services Act 2007 (c.29), sections 195(5) and 210, paragraph 2 of Schedule 20 and Schedule 23, but saved for limited purposes by S.S.I. 2008/332, article 2(2).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”). It enables the Scottish Legal Aid Board or its agents (collectively referred to for convenience as “the Board”) to share information with a professional organisation investigating allegations of professional misconduct against one of its members in terms of section 33(1)(a) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”).

Section 34(1) of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”), prohibits the Board from divulging information supplied to it without relevant consent. Section 34(2)(b) of the 1986 Act provides an exception to that prohibition. Prior to 1st October 2008, it permitted the Board to share information with professional organisations investigating, prosecuting or determining complaints under section 33(1)(a) of the 1990 Act. On that date, provisions of the 2007 Act were commenced which made the Scottish Legal Complaints Commission (“the Commission”) the first point of contact for all complaints against practitioners and section 34(2)(b) was consequentially amended to apply only where the professional organisation is investigating, prosecuting or determining a complaint referred by the Commission.

In the short term not all conduct complaints being investigated, prosecuted or determined by a professional organisation will have been referred by the Commission. Article 2 of the Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008(a) provides that before 1st October 2010 conduct complaints, as defined by section 33(1) of the 1990 Act, are to be taken directly to the appropriate professional organisation under that section where the impugned conduct first occurred before 1st October 2008 or, if the complaint also concerns the adequacy of the professional services, the practitioner was first instructed before 1st October 2008. In light of these transitional arrangements, this Order provides that, for the purposes of information sharing under section 34(2)(b) of the 1986 Act, such a complaint is to be treated as if it had been referred to the appropriate professional organisation by the Commission. This will ensure that the Board can continue to share information with the professional organisation investigating the complaint.

(a) S.S.I. 2008/332.