



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART II

LEGAL SERVICES

Scottish legal services ombudsman

34 Scottish legal services ombudsman.

(1) The Secretary of State may, after consultation with the Lord President, and subject to subsection (9) below, appoint a person, to be known as the Scottish legal services ombudsman, [^{F1}for the purpose of conducting investigations under this Act].

[^{F2}(1A) Subject to subsection (1E) below, the ombudsman may investigate any written complaint (a “handling complaint”) made to him by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person has been dealt with by the professional organisation concerned.

(1B) Subsection (1A) above applies whether or not the professional organisation concerned have treated the conduct complaint as a conduct complaint.

(1C) The ombudsman may decide—

- (a) not to investigate a handling complaint; or
- (b) to discontinue his investigation of a handling complaint.

(1D) If the ombudsman decides not to investigate a handling complaint or decides to discontinue his investigation of such a complaint he shall notify—

- (a) the person who made the handling complaint; and
 - (b) the professional organisation concerned,
- of his decision and the reason for it.

(1E) The ombudsman shall not investigate a handling complaint where—

Status: Point in time view as at 01/10/2004. This version of this provision has been superseded.

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- (a) the professional organisation concerned have not completed their investigation of the conduct complaint to which it relates; or
- (b) it is made after the expiry of such period of time as may be specified for the purpose of this subsection in directions given by the Secretary of State by virtue of paragraph 2 of Schedule 3 to this Act.

(1F) Paragraph (a) of subsection (1E) above does not apply if—

- (a) the handling complaint is that the professional organisation concerned—
 - (i) have acted unreasonably in failing to start an investigation into the complaint; or
 - (ii) having started such an investigation, have failed to complete it within a reasonable time; or
- (b) the ombudsman considers that, even though the complaint is being investigated by that organisation, an investigation by him is justified.]

(2) The ombudsman shall make such investigation of any handling complaint as seems to him to be appropriate ^{F3}. . . .

[^{F4}(2A) Where the ombudsman is conducting an investigation under this Act, he may require the professional organisation concerned—

- (a) to provide him with such information, being information which is within the knowledge of the professional organisation, as he considers relevant to his investigation; or
- (b) to produce to him such documents, being documents which are within the possession or control of the organisation, as he considers relevant to his investigation,

(including any information or, as the case may be, documents obtained by the organisation from the practitioner concerned while investigating the conduct complaint to which the handling complaint relates); and, notwithstanding any duty of confidentiality owed to any person by the professional organisation as respects any such information or, as the case may be, documents, the organisation shall comply with such a requirement.

^{F4}(2B) Where any information requested by the ombudsman under subsection (2A) above is not within the knowledge of the professional organisation concerned, or any documents so requested are not within their possession or control, the ombudsman may require the practitioner concerned in the conduct complaint to which the handling complaint relates—

- (a) to provide him with that information, in so far as it is within the knowledge of the practitioner; or
- (b) to produce to him those documents, if they are within the possession or control of the practitioner;

and, notwithstanding any duty of confidentiality owed to any person by the practitioner as respects any such information or, as the case may be, documents, the practitioner shall comply with such a requirement.]

(3)

[^{F5}(4) Where the ombudsman is conducting an investigation under this Act, he may at any time make a written interim report in relation to the investigation and shall send a copy of any such report to—

- (a) the person who made the handling complaint; and

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(b) the professional organisation concerned.]

(5) The ombudsman may—

- (a) if so requested by any person appointed to carry out equivalent functions in relation to the provision of legal services in England and Wales, investigate a complaint against a professional body in England and Wales on that person's behalf; and
- (b) request any person appointed as mentioned in paragraph (a) above to investigate a complaint against an organisation in Scotland on his behalf.

^{F6}(6)

^{F6}(7)

^{F6}(8)

(9) The following shall not be eligible to be appointed as the ombudsman—

- (a) advocates;
- (b) solicitors;
- ^{F7}(c)
- (d) ^{F8}..., executry practitioners within the meaning of section 23 of this Act;
- ^{F7}(e)
- ^{F7}(f)
- (g) [^{F9}conveyancing practitioners] within the meaning of section 23 of this Act; or
- (h) any member or employee of a professional or other body any of whose members has acquired any right to conduct litigation or right of audience by virtue of section 27 of this Act.

(10) Schedule 3 to this Act shall have effect in relation to the ombudsman.

Textual Amendments

- F1** Words in s. 34(1) substituted (21.5.1997) by 1997 c. 35, ss. 1(2), 6, 11(2)
- F2** S. 34(1A)-(1F) inserted (21.5.1997) by 1997 c. 35, ss. 1(3), 6, 11(2)
- F3** Words in s. 34(2) repealed (21.5.1997) by 1997 c. 35, ss. 1(4), 6, 10, 11(2), Sch.
- F4** S. 34(2A)(2B) inserted (21.5.1997) by 1997 c. 35, ss. 1(5), 6, 11(2)
- F5** S. 34(4) substituted (21.5.1997) by 1997 c. 35, ss. 1(7), 6, 11(2)
- F6** S. 34(6)(7)(8) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(a); S.S.I. 2003/384, art. 2(d)
- F7** S. 34(9)(c)(e)(f) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(b)(i); S.S.I. 2003/384, art. 2(d)
- F8** Words in s. 34(9)(d) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(b)(ii); S.S.I. 2003/384, art. 2(d)
- F9** Words in s. 34(9)(g) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(b)(iii); S.S.I. 2003/384, art. 2(d)

Modifications etc. (not altering text)

- C1** S. 34(9) extended (21.5.2000) by S.S.I. 2000/121, reg. 37, Sch. 2 para. 6(3)
- C2** S. 34(9) applied (1.10.2004) by Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004 (S.S.I. 2004/383), regs. 1(1), 16

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Commencement Information

- II** S. 34 partly in force; s. 34 not in force at Royal Assent see 75(2); s. 34(1)(9)(a)-(c)(10) in force at 1.4.1991 by [S.I. 1991/822, art. 3, Sch.](#); s. 34(2)-(8) in force at 3.6.1991 by [S.I. 1991/1252, art. 3, Sch. 1](#); s. 34(9)(d)(e)(g) in force at 1.3.1997 by [S.I. 1996/2894, art. 3, Sch.](#) and [S.I. 1996/2966, art. 2](#)

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