Draft Order laid before the Scottish Parliament under section 79(3) of the Legal Profession and Legal Aid (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

LEGAL AID AND ADVICE

LEGAL PROFESSION

The Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011

Made - - - - 2011

Coming into force in accordance with article 2

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.

In accordance with section 79(3)(c)(i) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation

1. This Order may be cited as the Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011.

Commencement

2.—(1) This Order, apart from article 5, comes into force the day after the day it is made.

(2) Article 5 comes into force immediately after the commencement of section 75 of the Legal Profession and Legal Aid (Scotland) Act 2007.

Amendment of the Solicitors (Scotland) Act 1980

3.—(1) The Solicitors (Scotland) Act 1980(**b**) is amended in accordance with this article.

(2) For section 3A(5)(b)(i) substitute—

> "(i) whether paragraph (a) or (d) of the said section 20(1) applies to the practitioner;".

(3) In section 53(2)(c) for "(3)" substitute "(3ZA)".

(**a**) 2007 asp 5.

(**b**) 1980 c.46; relevantly amended by the Council of the Law Society of Scotland Act 2003 (asp 14), section 1 (which inserted section 3A) and by the Legal Profession and Legal Aid (Scotland) Act 2007, schedule 5, paragraph 1(19)(a) (which inserted section 53(3ZA)).

Amendment of the Legal Aid (Scotland) Act 1986

4. In section 4(2) of the Legal Aid (Scotland) Act 1986(**a**) renumber as paragraph (abc) the paragraph numbered (ac) inserted by paragraph 39 of Schedule 3 to the Equality Act 2006(**b**).

5.—(1) The Legal Aid (Scotland) Act 1986 is amended in accordance with this article.

(2) In section 4(2)(**c**)—

(a) in paragraph (aba), for "17(2C)" substitute "17(2DA)"; and

(b) in paragraph (abb), for "17(2D)" substitute "17(2DB)".

(3) In section 17 renumber as subsection (2DA) and (2DB) respectively the subsections numbered (2C) and (2D) inserted by section 75(4) of the Legal Profession and Legal Aid (Scotland) Act 2007.

Amendment of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

6.—(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(**d**) is amended in accordance with this article.

(2) In section 20—

(a) for subsection (2B)(d) substitute—

"(d) a step which the Council may take in respect of a practitioner under subsection (2)(c) above.";

(b) omit subsection (5);

(c) in subsection (6) omit "subsection (2)(a) or (b) above, or the Tribunal, by virtue of subsection (2B)(d) above, make a similar direction, or where the Council make a direction under"; and

(d) in subsection (11) for "(2)(a)" substitute "(2)(c)".

(3) In section 20A(2)(a)(iii) for "(2)(a)" substitute "(2)(c)".

Amendment of the Legal Profession and Legal Aid (Scotland) Act 2007

7. In section 75(4) of the Legal Profession and Legal Aid (Scotland) Act 2007, in the opening words for "(2B)" substitute "(2D)".

A member of the Scottish Executive

St Andrew's House,
Edinburgh

(**a**) 1986 c.47.
(**b**) 2006 c.3.
(**c**) Paragraphs (aba) and (abb) are to be inserted by the Legal Profession and Legal Aid (Scotland) Act 2007, section 75(2).
(**d**) 1990 c.40; relevantly amended by the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), schedule 4, paragraph 12(6)(e) (which inserted section 20(2B)), paragraph 12(6)(h) (which amended section 20(6)), paragraph 12(6)(k) (which amended section 20(11)) and paragraph 12(7) (which inserted section 20A) and by the Legal Profession and Legal Aid (Scotland) Act 2007, schedule 5, paragraph 3(4)(e) (which amended section 20(2B)(d)), paragraph 3(4)(f) (which amended section 20(6)), paragraph 3(4)(i) (which amended section 20(11)) and paragraph 3(5) (which amended section 20A(2)(a)(iii)).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies section 75(4) of the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act") ahead of that section coming into force and modifies other enactments in consequence of provisions of the 2007 Act.

Article 3 amends the Solicitors (Scotland) Act 1980 ("the 1980 Act"). Specifically it—

(a) removes from section 3A(5)(b)(i) of the 1980 Act references to section 20(1)(b) and (c) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 ("the 1990 Act") in consequence of the repeal of the latter provisions by paragraph 3(4)(b)(ii) of schedule 5 to the 2007 Act (article 3(2));

(b) amends section 53(2)(c) of the 1980 Act in consequence of the insertion of subsection (3ZA) into section 53 of the 1980 Act by paragraph 1(19)(a) of schedule 5 to the 2007 Act. Prior to the amendment effected by this Order, section 53(2)(c) cross-referred to section 53(3) of the 1980 Act, which has been repealed by paragraph 1(11) of Schedule 20 and paragraph 1 of Schedule 23 to the Legal Services Act 2007 (c.29) (article 3(3)).

Article 4 amends the Legal Aid (Scotland) Act 1986 ("the 1986 Act"). The 2007 Act inserted into section 4(2) of the 1986 Act a new paragraph numbered (ac). The Equality Act 2006 ("the 2006 Act") also inserted a new paragraph numbered (ac) into section 4(2) of the 1986 Act. This resulted in there being two paragraphs numbered (ac) in section 4(2) of the 1986 Act. Article 4 resolves this by renumbering the paragraph inserted by the 2006 Act as paragraph (abc).

The 1986 Act is further amended by article 5. On its commencement, section 75 of the 2007 Act will insert new subsections into section 17 of the 1986 Act. As enacted, the 2007 Act provides for those new subsections to be inserted after section 17(2B) of the 1986 Act and for them to be numbered sequentially starting with subsection (2C). The 1986 Act has since been amended by the 2006 Act, which has inserted after section 17(2B) new subsections (2C) and (2D). Commencing section 75(4) of the 2007 Act, as enacted, would therefore result in there being two sections 17(2C) and (2D) in the 1986 Act. Article 5 renumbers the subsections inserted by the 2007 Act to ensure that their numbering does not conflict with the numbering of the subsections inserted by the 2006 Act. Article 5 also makes consequential amendments to paragraphs (aba) and (abb) of section 4(2) of the 1986 Act, which are to be inserted by section 75(2) of the 2007 Act. The amendments made by article 5 will take effect immediately after section 75 of the 2007 Act comes into force (article 2(2)).

Article 6 amends the 1990 Act. Specifically, it amends sections 20 and 20A of the 1990 Act in consequence of the repeal of paragraphs (a) and (b) of section 20(2) of that Act by paragraph 3(4)(c) of schedule 5 to the 2007 Act.

Article 7 amends section 75(4) of the 2007 Act. This is to ensure that the subsections it will insert into section 17 of the 1986 Act appear in the right place given their renumbering by article 5.

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