EXECUTIVE NOTE

DRAFT SSI: THE LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT 2007 (MODIFICATION AND CONSEQUENTIAL PROVISIONS) ORDER 2011

SSI 2011/XXX

The above Order was made in exercise of the powers conferred by section 78 of the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act"). A draft of the instrument containing it was laid before and approved by resolution of the Scottish Parliament.

Policy Objectives

The purpose of the Order is to make amendments to primary legislation to tidy up the statute book in consequence of the 2007 Act.

Articles 3 and 6 – Amendment of the Solicitors (Scotland) Act 1980 and Amendment of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

Section 20(1)(b) and (c) and (2)(a) and (b) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 was repealed by the 2007 Act because the Law Society of Scotland's powers to impose sanctions for inadequate professional service complaints have passed to the Scottish Legal Complaints Commission. Articles 3 and 6 of the Order remove references to the repealed provisions where they appear in the 1990 Act and in the Solicitors (Scotland) Act 1980.

In addition, the 1980 Act is updated to reflect the insertion of section 53(3ZA), and the repeal of section 53(3), of that Act

Articles 4, 5 and 7 — Amendment of the Legal Aid (Scotland) Act 1986 and the 2007 Act

Articles 4, 5 and 7 of the Order are to fix problems with the numbering of provisions in the Legal Aid (Scotland) Act 1986.

Article 4 is to fix a numbering problem in section 4(2) of the 1986 Act. The UK Parliament's Equality Act 2006 inserted a new section 4(2)(ac) into the 1986 Act. The 2007 Act (which is an Act of the Scottish Parliament) also inserted a new section 4(2)(ac) into the 1986 Act. Article 4 resolves this numbering conflict by renumbering as paragraph (abc) the paragraph numbered (ac) that was inserted by the Equality Act.

Articles 5 and 7 fix a numbering problem in relation to section 17 of the 1986 Act. The Equality Act amended section 17 of the 1986 Act by inserting new subsections numbered (2C) and (2D). Section 75 of the 2007 Act, as enacted, would also insert new subsections numbered (2C) and (2D) into section 17 of the 1986 Act. To prevent that from happening, articles 5 and 7 of the Order amend section 75 of the 2007 Act and the provisions to be inserted by it so that they will be inserted after section 17(2D) of the 1986 Act as inserted by the Equality Act and will be numbered accordingly. Section 75 of the 2007 Act will come into force on a day to be appointed by the Scottish Ministers by order.

Consultation

The Order makes provision which is supplemental to the provisions and policy aims of the 2007 Act. Those provisions and aims were consulted on and therefore no formal consultation has been undertaken in relation to the Order. However, both the Law Society of Scotland and the Scottish Legal Aid Board were consulted.

Financial Effects

The Order simply tidies up the statute book. It has no financial effect.