EXECUTIVE NOTE

THE LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT 2007 (TRANSITIONAL PROVISION) ORDER 2009 SSI/2009/17

This Order is made in exercise of the powers conferred on Scottish Ministers by section 78 of the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act") and all other powers enabling them to do so.

Policy Objective

The policy objective is to ensure that the Scottish Legal Aid Board and those acting on its behalf can share information with professional organisations investigating transitional complaints. In this note, a "transitional complaint" is a complaint of professional misconduct against a member of the legal profession where the conduct complained of first occurred before 1 October 2008 or, if the complaint also concerns the adequacy of professional services, the practitioner was first instructed before that date.

With effect from 1 October 2008, the Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008 ("the 2008 Order") commenced provisions of the 2007 Act making the Scottish Legal Complaints Commission the first point of contact for all complaints against practitioners. Under the new statutory regime, where a complaint relates to professional misconduct the Scottish Legal Complaints Commission will remit it to the relevant professional organisation. However, article 2 of the 2008 Order preserves the existing regime, insofar as transitional complaints can continue to be taken directly to the relevant professional organisation.

Section 34(2)(b) of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") authorises the Scottish Legal Aid Board and its agents to share information with professional organisations investigating complaints of misconduct against their members. The 2007 Act consequentially amended section 34(2)(b) of the 1986 Act to reflect the new statutory regime whereby conduct complaints are remitted to the relevant professional organisation by the Scottish Legal Complaints Commission. This Order ensures that the Scottish Legal Aid Board and those acting on its behalf can continue to share information with professional organisations investigating transitional complaints, where the complaint has been taken directly to the relevant professional organisation and not remitted to it by the Scottish Legal Complaints Commission.

This Order will naturally expire alongside the transitional arrangements of the 2008 Order. Article 2(3) of that Order provides that transitional complaints can only be taken to the relevant professional organisation before 1 October 2010.

Consultation

The intention to make this transitional provision has been discussed with the Scottish Legal Aid Board.

Financial Implications

The Order has no financial effects on the Scottish Government, local government or on business.

Scottish Government
20 January 2009