

*These notes relate to the Legal Profession and Legal Aid
(Scotland) Act (asp 5) which received Royal Assent on 19 January
2007 (asp 5) which received Royal Assent on 19 January 2007*

LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT (ASP 5) WHICH RECEIVED ROYAL ASSENT ON 19 JANUARY 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the Scottish Legal Complaints Commission

Section 10: Commission upholds services complaint

24. **Section 10** provides that where the Commission makes a determination under section 9(1) upholding a services complaint, it may take certain steps to provide redress for the complainer which it considers fair and reasonable in the circumstances.
25. The steps are (a) to determine the amount of fees or outlays to which the practitioner is entitled for the services provided to the client - the amount determined can be nil, and the Commission can require the practitioner to waive or refund fees and outlays; (b) to direct the practitioner to rectify at the practitioner's own expense any error, omission or other deficiency arising in connection with the services as the Commission may specify; (c) to direct the practitioner to take at his or her own expense such other action in the interests of the complainer as the Commission may specify; (d) where the Commission considers that the complainer has been directly affected by the inadequate professional services, to direct the practitioner to pay the complainer by way of compensation for loss, inconvenience or distress such amount not exceeding £20,000 as the Commission may specify; and (e) where the Commission considers that the practitioner does not have sufficient competence in relation to any aspect of the law or legal practice, to report the matter to the relevant professional organisation. Where the practitioner is an employee solicitor, the Commission will issue a copy of such a report to the employing solicitor.
26. In determining what form of redress is appropriate, the Commission must take into account any of the following steps that may already have been taken in respect of the subject matter of the complaint: any previous award of compensation that it has directed the practitioner to pay; any award of damages made to the complainer by a court; any other compensation ordered by a tribunal or professional body.
27. Where the practitioner is an employee of an employing solicitor, then any direction by the Commission in respect of a services complaint ordering a reduction of fees or outlays or the carrying out of remedial work will be made against the employing practitioner and not the employee. It also provides that a direction to pay compensation may be made to the employing practitioner; or the employee practitioner; or both - if both, then the compensation payment should be allocated between them as the Commission considers appropriate.
28. Before determining whether or not to reduce the amount of fees or outlays to which the practitioner is entitled for the services which have been the subject of the complaint, the

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Commission may submit the practitioner's accounts for the fees and outlays in question
to the Auditor of the Court of Session for taxation.

29. The Scottish Ministers, after consultation with the relevant professional organisations and such consumer interest groups as the Scottish Ministers consider appropriate, may by order (subject to the affirmative resolution procedure) amend the maximum level of compensation which the Commission may award under section 10(2)(d).