

*These notes relate to the Legal Profession and Legal Aid
(Scotland) Act (asp 5) which received Royal Assent on 19 January
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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 4: Complaint not made timeously or made prematurely

11. **Section 4** prevents the Commission from taking the preliminary steps under section 2(4) in relation to a complaint which is made after the expiry of the time limit for the making of a complaint, which is fixed by the Commission's rules. The Commission may extend the time limit in circumstances specified in its rules.
12. **Section 4** also provides that the Commission need not take steps under section 2(4) or take any further action in relation to premature complaints. Premature complaints are defined as those which the complainer has not sought to resolve at local level by communicating the substance of the complaint to the legal practitioner (or firm or employer) concerned (thus giving the practitioner, firm or employing practitioner a reasonable opportunity to deal with it) and in relation to which there are no rules which would require the Commission to take further steps. Although section 4(2) gives the Commission discretion as to whether to progress a premature complaint (by taking the further steps), rules made under section 32 (see paragraph 2(c) of schedule 3) may set out circumstances in which, in effect, the discretion is overridden (and further steps are to be taken). So where no such rules are made, or do not apply to a particular set of circumstances, the Commission will have the discretion.
13. The Commission is required to give the complainer and practitioner notice in writing where it decides not to take further action in relation to a complaint which has not been made timeously or has been made prematurely. In the case of premature complaints such notice must specify whether or not the Commission is proceeding to take the preliminary steps referred to in section 2(4).