

*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 6: Complaint determined to be conduct complaint

15. **Section 6** provides that where the Commission determines that a complaint is a conduct complaint, it is to remit the complaint and any accompanying material to the relevant professional organisation to deal with. The Commission must give the complainer and the practitioner notice that it has remitted the complaint, specifying the reasons for the determination and confirming that the relevant professional body is under a duty to deal with the conduct complaint. Section 47 places a duty on each relevant professional organisation to investigate a remitted conduct complaint.
16. The Council of the Law Society of Scotland and the Scottish Solicitors' Discipline Tribunal retain their substantive roles in relation to dealing with professional misconduct under the Solicitors (Scotland) Act 1980 ("the 1980 Act"). The Council will continue to be able to prosecute professional conduct complaints against solicitors before the Tribunal by virtue of section 51(1) of the 1980 Act. The Council will also continue to have the option of determining such complaints against conveyancing and executry practitioners itself by virtue of section 20 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 ("the 1990 Act") or of prosecuting before the Tribunal under section 51(1A) of the 1980 Act. Sections 53 and 54 of the Act amend the 1980 and 1990 Acts to give the Council powers in relation to unsatisfactory professional conduct by solicitors and conveyancing and executry practitioners respectively.
17. The Faculty of Advocates deals with complaints on an administrative, non-statutory basis; its disciplinary rules set out the constitution and procedures of the Faculty's Complaints Committees and Disciplinary Tribunal. The Act does not change the existing role of the Faculty of Advocates in relation to determining complaints alleging professional misconduct by advocates. It gives the Faculty a new role in relation to complaints about unsatisfactory professional conduct but does not give the Faculty statutory powers. So the Faculty will deal with these complaints on an administrative, non-statutory basis.