

*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 2 – Conduct Complaints: Other Matters

Section 57: Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct

151. **Section 57** inserts new provisions into section 54 of the 1980 Act which set out rights in relation to appeals to the Court of Session against decisions of the Scottish Solicitors' Discipline Tribunal in conduct cases other than unsatisfactory professional conduct, i.e. professional misconduct and failure by incorporated practices to comply with any provisions of the Solicitors (Scotland) Act 1980.
152. **Section 57(1)** amends section 54 of the 1980 Act to set out in detail the rights of the different parties involved to appeal from the Tribunal to the Court of Session. As well as the practitioner, the Council of the Law Society is able to appeal, although not against any award of compensation to the complainer. The complainer may now appeal against a decision refusing to award compensation or awarding an amount of compensation regarded by the complainer as insufficient. Provision is also made for an appeal by the practitioner against any ruling that the restriction, suspension or revocation of an investment business certificate takes effect immediately from the date on which the Tribunal's order is intimated to the practitioner.
153. Section 54(1) of the 1980 Act cannot be repealed in the Act because this provision applies to reserved as well as devolved legal services. Repeal will ultimately be achieved through the Legal Services Bill introduced in the UK Parliament on 23 November 2006. In the meantime, section 54(1) is restricted to cases relating to reserved legal services and activities.
154. **Section 57(2)** makes corresponding provision in relation to professional misconduct appeals involving conveyancing and executry practitioners. Subsection (2) takes account of the fact that under the 1990 Act there are different routes for making disciplinary decisions against such a practitioner: either a decision by the Council of the Law Society, which may be reviewed by the Council and then appealed to the Scottish Solicitors' Discipline Tribunal and onwards to the Court of Session; or a first instance decision by the Tribunal itself, with onward appeal to the court. The changes made by section 57(2) are integrated into this existing structure.
155. Subsection (2) also includes provision for appeals against findings that the circumstances in section 20(1)(d) of the 1990 Act apply. Section 20(1)(d) is peculiar to the 1990 Act and the circumstances are that the Council is satisfied that a conveyancing

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or executry practitioner has been convicted of a criminal offence rendering him or her
no longer a fit and proper person to offer conveyancing or executry services. Currently
such a finding cannot be appealed (although the steps taken on the back of such a finding
can).