

*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**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4 – Legal Aid**

##### ***Section 64: Criminal legal aid in solemn proceedings***

164. **Section 64** repeals the provisions in section 23 of the Legal Aid (Scotland) Act 1986 ('the 1986 Act') which provide that applications for criminal legal aid in solemn proceedings are made to the court and transfers the power to grant criminal legal aid in such proceedings to the Scottish Legal Aid Board ('the Board'). It does not change the criteria by which such applications are determined. Section 64 inserts a new section 23A which provides that the Board can make criminal legal aid available to a person being prosecuted under solemn procedure only if it is satisfied, after consideration of the person's financial circumstances, that the expenses of the case cannot be met without undue hardship to the person or his dependants. It further stipulates that the Board shall establish a procedure whereby a person who has been refused criminal legal aid in solemn proceedings may apply to the Board for a review of their application.
165. New section 23A of the 1986 Act provides that the Board may make grants of legal aid in solemn cases subject to such conditions as it considers expedient. It provides that the Board may impose conditions at any time and require recipients to comply with such conditions. This will enable the Board to satisfy itself that the undue hardship test continues to be met and that it is reasonable for legal aid to continue to be received. It further stipulates that the Board shall establish a procedure whereby a person whose award of legal aid in solemn proceedings is made subject to conditions may apply to the Board for a review of the decision to make those conditions.
166. **Section 64** also makes consequential amendments to the 1986 Act so that all references made to the provision concerning criminal legal aid in solemn proceedings do so with reference to the relevant new provisions.