

*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 4 – Legal Aid

Section 76: Regulations under section 36 of the 1986 Act

204. Section 36 of the 1986 Act is a regulation making power and allows the Scottish Ministers to make such regulations as appear to them necessary or desirable so as to give effect to or prevent abuses of the 1986 Act. Regulations made under the section may also make different provision in relation to legal aid and advice and assistance respectively and for different cases or classes of case. Section 76 amends that section by inserting new subsections (2)(ca) and (2A) which provide the Board with extended powers. Subsection (2)(ca)(i) enables the Scottish Ministers to make regulations which allow the Board to determine a list of distinct matters for which advice and assistance may be provided by solicitors, advisers and, where appropriate, counsel. Subsection (2)(ca)(ii) allows regulations to be made which provide the Board with the power to treat a matter not on the list as if it was included there.
205. Subsection (2A)(a) requires that the Board may only determine the matters which are or are not to be treated as distinct matters for the purposes of advice and assistance following consultation with the Law Society of Scotland. Subsection (2A)(b) provides that the Board is required to seek the approval of the Scottish Ministers before it may determine that a matter which has been determined by the Board to be treated as a distinct matter is no longer to be so treated.