

*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 4 – Legal Aid

Section 65: Criminal legal aid: conditions and reviews

167. Section 24 of the 1986 Act deals with the availability of criminal legal aid in summary proceedings and, at subsection (2), enables the Board to require a person to comply with conditions once legal aid has been granted. This allows the Board to satisfy itself from time to time that it is in the interests of justice for legal aid to continue to be received. Section 65 amends that section so as to provide that the Board may be able to impose conditions when making such grants of legal aid.
168. **Section 65** inserts subsection (1A) in section 24 of the 1986 Act to provide that the Board may make legal aid available subject to such conditions as it considers expedient and that these conditions may be made at any time, including when first making legal aid available. Subsection (2) of section 24, the pre-existing condition-making power, is amended to provide that the Board may impose conditions in relation to the continued application of the financial eligibility test. Such conditions may include the requirement that the assisted person provide full financial information to the Board at any stage in the case and will allow legal aid to be made available subject to case specific conditions including the reaching of a procedural step. The new subsection (5A) provides that the Board shall establish a procedure whereby an assisted person whose grant of criminal legal aid is subject to a condition made under the new subsection (1A) may apply to the Board for a review of that condition. An amendment is also made to subsection (6) of section 24. This provides that, in cases where at the trial diet there is no legal aid in place as a result of the grant of legal aid ceasing due to the operation of a condition, the court may adjourn the trial diet to allow an application to be made to the Board if it considers that, owing to the exceptional circumstances of the case, it would be inequitable to proceed with the trial without representation.
169. **Section 65** also amends section 25 of the 1986 Act. This concerns the availability of legal aid in connection with appeals against conviction, sentence, other disposal or acquittal in criminal proceedings. There is a pre-existing condition-making power at section 25(3) which allows the Board to require a person in receipt of legal aid to comply with conditions. Section 65 inserts a new subsection (2C) which provides that conditions may be imposed at any time, including at the time legal aid is made available. This will allow legal aid to be made available subject to case specific conditions including the reaching of a procedural step. It also inserts a new subsection (2B) which provides that the High Court can determine that legal aid should be made available for

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an appeal where the court thinks that it is in the interests of justice for it to do so in cases where the Board has terminated a grant because it is no longer satisfied that this is the case. This is an extension of the High Court's powers. There is an existing provision under section 25(2A) where the High Court can make a similar determination where an application for criminal legal aid for an appeal has been refused by the Board on the basis that it was not satisfied that it was in the interests of justice for it to be made available. Section 65 also inserts new subsections (3A) and (3B) in section 25 to provide that the Board shall establish a review procedure so that a person whose application for criminal legal aid in an appeal is refused or granted subject to conditions may apply to the Board for a review of the refusal or a review of the decision to make such conditions.

170. **Section 65** also amends section 25AB of the 1986 Act. This concerns the availability of legal aid in connection with references, appeals or applications for special leave to appeal to the Judicial Committee of the Privy Council (JCPC). It inserts new subsections (2A), (3A) and (3B) to provide that the Board may grant legal aid in such cases subject to such conditions it considers expedient, that these conditions may be imposed at any time and that it shall establish a review procedure so that a person whose application for legal aid in connection with proceedings before the JCPC is either refused or granted subject to conditions may apply to the Board for a review of the refusal or a review of the decision to make such conditions.