

*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 67: Register of advice organisations: advice and assistance

172. **Section 67(2)** amends section 4(2)(a) of the 1986 Act to enable the Board to make payments out of the Legal Aid Fund in respect of certain categories of advice and assistance to registered organisations in the same way as it is able to do in respect of solicitors and counsel.
173. **Section 67(3)** amends section 6 of the 1986 Act which provides for a number of definitions of terms used in the 1986 Act. It amends the definition of “advice and assistance” so as to extend it to include oral or written advice provided by an adviser, qualifies the definition of “assistance and assistance by way of representation” to include advice and assistance as provided by an adviser but only to the extent to which it is competent for the adviser to perform such steps and inserts a definition of “adviser” into subsection (2).
174. **Section 67(4)** amends section 10 of the 1986 Act by adding appropriate references to “advisers” to its provisions which relate to the providers of advice and assistance and their responsibilities in respect of the financial limits which apply to the scheme. Section 10(3) is amended to provide that the cost of providing advice and assistance shall include the outlays incurred and the fees properly chargeable by the registered organisation which approved the adviser. Section 67(5) amends section 12 of the 1986 Act which specifies that payment may be made from the Legal Aid Fund for the fees and outlays of providers of advice and assistance only after any client contributions, expenses or any property recovered or preserved are exhausted. The amendment means that registered organisations can receive such payments from client contributions, expenses or, as the case may be, from property recovered or preserved and that they can make claims to the Board for payment from the Fund where these other sources of payment are either not available or where they do not fully cover the amount due to them by way of outlays incurred and fees properly chargeable.
175. **Section 67(6)** inserts new sections 12A and 12B into the 1986 Act. Section 12A provides that a register of advice organisations is to be established and maintained by the Board. This register will consist of organisations which have been approved by the Board to provide advice and assistance as advisers. It is specified that solicitors, advocates, conveyancing practitioners, executry practitioners or persons who have a right to conduct litigation or right of audience by virtue of section 27 of the Law Reform

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 (Miscellaneous Provisions) (Scotland) Act 1990 may not be approved by a registered organisation as an adviser.

176. New section 12B enables regulations to be made which specify the categories of circumstances in which an adviser approved by a registered advice organisation may provide advice and assistance. It provides that the regulations may specify different categories for different purposes. It qualifies the definitions of “advice and assistance” and “assistance by way of representation” in relation to advisers. An adviser may assist or represent a person only to the extent to which it is competent for the adviser to so act.
177. [Section 67\(7\)](#) amends section 33 of the 1986 Act which deals with the payment of fees and outlays to solicitors and counsel. It inserts a new subsection (1A) which provides that fees and outlays incurred by advisers shall be paid to the registered organisation which had approved them as persons who may provide advice and assistance. It also amends subsection (2) of section 33. This deals with the Scottish Ministers’ ability to make appropriate provision by regulations in respect of the fees and outlays of solicitors and counsel in relation to proceedings for which legal aid has been made available and to cases in which advice and assistance is provided. The amendment specifies that the Scottish Ministers may also make such provision under this section in respect of the fees and outlays of advisers providing advice and assistance.
178. [Section 67\(8\)](#) adds definitions of “adviser”, “adviser code”, “the register of advice organisations” and “registered organisation” to section 41, the interpretation provision, of the 1986 Act.
179. [Section 67\(9\)](#) inserts a new Schedule 1A to the 1986 Act which makes further provision regarding the register of advice organisations. The Schedule makes general provision regarding the register of advice organisations and specifies the process by which an advice organisation may apply to be registered; the terms and conditions of the adviser code for advisers and registered advice organisations which the Board is to prepare, submit to Ministers for approval, lay before the Scottish Parliament and publish; the requirement of the Board to monitor both the compliance with the adviser code by registered organisations and the provision of advice and assistance and related activities by advisers approved by registered organisations; the procedures whereby the Board may remove an organisation from the register; and, the procedures by which an organisation may appeal against a decision of the Board to either refuse its application for registration or to remove its name from the register.