

*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 75: Contributions, and payments out of property recovered

198. **Section 75** amends section 4 of the 1986 Act, which sets out the purposes for which money may be paid into and out of the Legal Aid Fund, and section 17 of the 1986 Act, which deals with contributions, and payments out of property recovered.
199. **Section 75(4)** inserts new subsections (2C) to (2I) into section 17 of the 1986 Act. Subsection (2C) provides that, in relation to proceedings in respect of which a person has been granted civil legal aid, if the total contribution made by a person exceeds the net liability then the excess shall be repaid to the person. Subsection (2D) makes similar provision in respect of sums paid to the Board from property preserved or recovered; where these are no longer required to meet the net liability on the Fund having taken into account an award of or agreement to expenses, the excess shall be repaid to the assisted party. Section 75(2) inserts new subsections (aba) and (abb) into section 4(2) which enable sums to be paid out of the Legal Aid Fund in respect of new subsections 17(2C) and (2D).
200. Subsection (2E) provides that the provisions in subsection (2B) requiring any net liability to be met from property preserved or recovered do not prejudice the court's ability to allow an opponent to set-off an award of expenses or damages in that person's favour against any damages or expenses awarded to the person in receipt of civil legal aid.
201. Subsection (2F) re-inserts a definition of "net liability of the Fund" into section 17 of the 1986 Act. The definition was removed as the result of a repeal made by the Legal Aid Act 1988 although "net liability of the Fund" is referred to in section 17(2B) of the 1986 Act. Subsection (2F) provides that a "net liability of the Fund" is the aggregate amount of the sums paid or payable to a solicitor or counsel out of the Fund in respect of proceedings, including any sums in relation to advice and assistance given by a solicitor, counsel or adviser approved by a registered organisation in connection with the proceedings, which are not recouped by the Fund from expenses or as a result of any right of indemnity against such expenses. It is intended that this will reduce the likelihood of confusion or disagreement about the limit of the amount which the Board is required to recover in terms of section 17(2A) and (2B) of the 1986 Act.
202. Subsections (2G), (2H) and (2I) make provision in relation to cases where civil legal aid or advice and assistance has been provided either by virtue of a grant made by the Board

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under section 4A or by a solicitor employed by the Board under Part V of the 1986 Act. They provide that the sums referred to in the definition of net liability at subsection (2F) should be taken to include sums which would have been payable had the assistance been provided by a privately employed solicitor, counsel or adviser funded on a case by case basis. This enables the net liability to be calculated and any excess to be repaid to the assisted party where sums have been paid from the Legal Aid Fund to meet the costs of providing an advice service rather than directly to a solicitor, counsel or adviser in respect of the assisted party's case.

203. [Section 75\(3\)](#) inserts new subsections 3(ca) and 3(cb) into section 4 of the 1986 Act to enable money to be paid into the Legal Aid Fund in respect of expenses or property recovered or preserved in proceedings where advice and assistance has been provided either by virtue of a grant made by the Board under section 4A or by a solicitor employed by the Board under Part V of the 1986 Act.