

*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 71: Availability of civil legal aid for defamation or verbal injury

187. Part II of Schedule 2 to the 1986 Act provides that civil legal aid shall not be available for certain specified proceedings including those which are wholly or partly concerned with defamation or verbal injury. This exception is not absolute and can be waived where it would otherwise require the withdrawal of legal aid from an assisted person as a result of their opponent lodging a claim for defamation against them. Section 71 of this Act amends Schedule 2, and section 14 of the 1986 Act, which deals with the availability of civil legal aid, to provide that civil legal aid can be made available by the Board to pursuers or defenders in defamation proceedings where exceptional circumstances are shown to exist.
188. **Section 71** inserts new subsections (1C), (1D) and (1E) into section 14 of the 1986 Act. New subsection (1C) provides that the Board must be satisfied that further criteria, in addition to those which are required to be met in accordance with the existing statutory tests provided by sections 14 and 15, are met before legal aid may be made available in defamation cases. Subsection (1C) specifies that the relevant criteria will be set out by the Scottish Ministers in directions issued to the Board and enables the Board to make legal aid available in cases where it is satisfied that the criteria as set down in the directions are satisfied. Subsection (1D) provides that the directions may include criteria which the Board requires to satisfy itself and provides that the directions may make different provision for different purposes and be varied or revoked at any time. Subsection (1E) provides that the Board must comply with directions and that the Scottish Ministers must arrange for their publication.
189. **Section 71** also amends Part II of Schedule 2. It removes the reference in paragraph 2 in that part of the Schedule to the granting of legal aid for the purposes of defending a counterclaim for defamation or verbal injury will allow the new test as set down in the directions to apply to applications for legal aid made in connection with counterclaims for defamation. This will enable a consistent approach to be taken in respect of the eligibility criteria for legal aid in all defamation proceedings.