



# THE 'REGISTERED PARALEGAL'

## - Paper 1

*A professional status for paralegals in Scotland,  
regulated by the Law Society of Scotland....*

In partnership with:



SCOTTISH PARALEGAL ASSOCIATION

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## SECTION 1 – FOREWORD BY THE PRESIDENT

Between May and July 2008, in association with the Scottish Paralegal Association, the Society consulted on the creation of a regulated status for paralegals in Scotland. Primarily, this was an information gathering exercise on the proposed ‘Law Society of Scotland Registered Paralegal’ scheme.

The consultation received a significant number of responses (over 400), **confirming the Society’s intention to work with SPA to establish a ‘Registered Paralegal’ status in Scotland.** However, the consultation closed during the economic decline and the Society and the SPA agreed that it was not appropriate to progress the scheme in that climate, particularly as paralegals were amongst the first affected when redundancies hit the profession.

Since February 2009, development work on the proposed project was progressed ‘behind the scenes’, under the new management of the Education and Training Policy Department, bringing with it the opportunity to consider the possible development of education and training requirements for Registered Paralegals in the context of developments in relation to the Education and Training Committee’s review of education, training and lifelong learning for solicitors – to be implemented from September 2011.

However, it was not considered to be appropriate to set and publicly commit to a launch date until September 2009, when the Board of the Society confirmed its support for the proposals of the SPA and Education and Training Policy Department to (i) launch a second consultation – a set of final policy proposals - on the proposed scheme, and (ii) prepare for launch of the scheme itself by summer 2010. The Society’s Council in November 2009 has confirmed its support for the development of this project.

Why consult again? Well, over a year has elapsed since the original consultation closed in July 2008, and we are operating in a markedly different market to that of summer 2008, where recovery may take some years. In the interim, redundant paralegals may have embarked on further study to improve their employability in anticipation of market recovery. Certainly, organisations delivering legal services have required to re-evaluate their business models and their positioning within the Scottish legal services market generally, to ensure their sustainability – as has the Society.

A final document outlining proposals for the scheme, which takes the original consultation proposals forward in the context of the market we are now in whilst staying true to the principle that regulation of paralegals is absolutely necessary for Scotland, is therefore deemed to be appropriate. Original consultation responses have been instrumental in this process, informing the content of this second, and final, consultation paper.

This paper:

- Provides background on the Scottish paralegal market in 2009, including particular changes in relation to paralegal education.
- Indicates why the Society believes that it is now appropriate, in November 2009, to work

towards bringing the scheme to fruition

- Proposes the launch of 'Phase I' of this scheme by **summer 2010** and highlights the need for the scheme to evolve as it will launch in a rapidly evolving legal services market - including plans for what would be 'Phase II'.
- The first consultation responses having been analysed, and key stakeholders having been closely consulted in the interim period, introduces the proposed shape of 'Phase I' of the Registered Paralegal scheme in more detail than the original policy paper allowed.
- Introduces ideas on how the scheme will evolve in the years which follow launch – through 'Phase II'.
- Invites responses to these final proposals.

The key principles of this scheme are that:

- Other than those who will be deemed to already meet the standards the Registered Paralegal project intends to set, and who will be 'grandfathered' into the scheme through transitional measures (Stages 1 and 2), that there are defined entrance requirements for anyone who wishes qualify as a 'Registered Paralegal (*e.g. Debt Recovery*)'.
- Those entry requirements are the holding of a relevant qualification, plus one year's experience as a Trainee Registered Paralegal (*e.g. Debt Recovery*)'
- Those eligible to join will be required to commit to various standards (Code of Conduct, complaints regime, and CPD requirements)
- Those in the scheme will receive access to variety of Society services and benefits (for example: dedicated portal tailored to the requirements of Trainee Registered Paralegals an Registered Paralegals, receiving The Journal including dedicated Registered Paralegal page, tailored E-bulletins, and access to our Professional Practice advice lines)
- There will be a £100 cost, per Registered Paralegal, to join the scheme.

**All of the proposals are examined in more detail in this Paper 1. Throughout this document, it will be highlighted where policy proposals have evolved from those originally consulted on, as a result of the Society's analysis of responses and subsequent stakeholder meetings. Specific questions are asked in the relevant section of the document, and at the end of this document there is a summary of all questions.**

**Paper 2, a paper on the educational competencies which apply to the scheme, will be available during the consultation period for comment at a later date.**

## RESPONSES AND CONTACTS:

**RESPONSES ARE INVITED BETWEEN MONDAY 30<sup>TH</sup> NOVEMBER, AND NO LATER THAN 12:00 NOON ON FRIDAY, 29<sup>TH</sup> JANUARY 2010.**

It is possible to respond by email to the questions below (Appendix A is a summary of questions), but we would prefer if you would submit your response on the [online form](#) (click on 'online form' to be taken to the consultation questions):

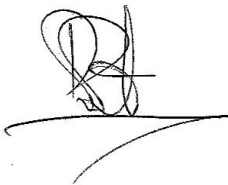
If not completing the online questionnaire, please send your responses, or direct any questions, to:

- Collette Patricia Paterson, Deputy Director (Education and Training Policy)
- [registeredparalegals@lawscot.org.uk](mailto:registeredparalegals@lawscot.org.uk)
- T. 0131 226 8891 Minicom 0131 476 8359

If your enquiry is about the Scottish Paralegal Association, you may wish to contact their Joint Presidents:

- Karen Leslie – [Karen.Leslie@stronachs.com](mailto:Karen.Leslie@stronachs.com)
- Alison Butters – [Alison.Butters@mhdlaw.co.uk](mailto:Alison.Butters@mhdlaw.co.uk)
- <http://www.scottish-paralegal.org.uk>

Thank you for taking the time to contribute to the development of a scheme which seeks to create a professional status and defined career path for paralegals, provide clarity for solicitors employing and delegating work to paralegals, and, above all else, protect those who use legal services in Scotland.



**Ian Smart**  
**President, The Law Society of Scotland**

**November 2009**

## SECTION 2 BACKGROUND – PARALEGALS IN SCOTLAND IN 2009

### 1. IN ASSOCIATION WITH THE SCOTTISH PARALEGAL ASSOCIATION

The Scottish Paralegal Association was formed in 1993 and was recognised by The Law Society of Scotland as the professional body representing Paralegals in Scotland in 1997. It is managed by an elected committee of paralegals, who elect their Office Bearers. Committee members work on a voluntary basis and in recent years have established a closer relationship with the Law Society of Scotland. Members, of which there are three grades (1 to 3, 1 being the highest) must comply with a Code of Conduct and CPD requirements. They also receive a range of membership benefits (including opportunities for free CPD). The SPA has campaigned for several years for (i) regulation of paralegals and (ii) the development of nationally recognised and assessed qualifications for paralegals in Scotland, and has engaged in discussions with the Scottish Government, Scottish Qualifications Authority, and Law Society of Scotland on this.

The evolution of the work of the SPA, supported by the Society, has been an agreement to work together to introduce a new, regulated status for paralegals in Scotland. The Society's executive team has led on development of the educational, regulatory and representative requirements for such a scheme, and in that process with the expertise of the SPA has been invaluable.

Although developed in partnership with the SPA, the scheme will be open to all paralegals, whether a member of any current association or not. All those wishing to join will have to demonstrate that they meet the entry criteria for entry, which are outlined later in this paper. Prior membership of any current body is not required in order to apply to become 'registered', and everyone who considers that they are working as a paralegal in Scotland will have equal opportunity to join the scheme. However, certain groups may be covered by transition arrangements and there is also further detail on this later in the paper.

### 2. WHAT IS A PARALEGAL?

There is currently no fixed definition of a 'paralegal' in either Scotland or England and Wales. Those using the title do not require any particular qualifications, experience or to be registered with any professional or regulatory body.

In England and Wales there are opportunities to join standard setting bodies, although there is no regulation by the Solicitors Regulation Authority itself. **In Scotland, the Law Society of Scotland is now committed to using its experience and expertise as a regulator to extend its reach and introduce this scheme for paralegals, on a voluntary basis in the first instance.**

A paralegal is generally regarded to be a non-admitted, non-solicitor fee-earner. For solicitors working within the in-house sector, paralegals are often seen as 'legally qualified' support staff, who can carry out specific tasks that would otherwise be carried out by a solicitor. Many paralegals will also assist with general administrative and business support.

Paralegals may work in a range of roles and titles can vary accordingly (for example; 'paralegal', 'legal executive', 'matrimonial executive', or 'conveyancer'). In Scotland it is estimated that there are approximately 10,000 paralegals. This comes from examining the data traditionally used to arrive at such figures (such as the number of legal support staff identified through studies such as the Cost of Time project), but then adding data from the high numbers of paralegals present in the public and private sector (for example, Local Authorities, The Scottish Government, The Crown Office and Procurator Fiscal Service, and many large private enterprises from banking to manufacturing which employ paralegals). The SPA and the SSP (discussed later) have also provided details of their current membership numbers.

The work that a paralegal does is incredibly varied and for a scheme such as the one the Society is proposing, it is important to (i) develop a competency map detailing the expected standard of the Registered Paralegal in the context of different areas and (ii) examine the paralegal-solicitor relationship, in terms of the respective responsibilities in the workplace. Both (i) and (ii) are considered later in this paper.

### 3. WHAT QUALIFICATIONS DO THEY HOLD?

As already stated, there is no required qualification, but, many paralegals have formally taught and assessed qualifications.

**Since the 2008 consultation, there have been significant developments in relation to paralegal training in Scotland, outlined below.**

#### **Strathclyde University/Central Law Training (CLT)**

These courses range in length and have a final written examination. Most can also be studied by distance learning. Graduations are held annually. The courses include; Company & Commercial Law, Employment Law, Civil Court Practice, Commercial Conveyancing, Consumer Law & Litigation, Conveyancing Criminal Practice, Debt Recovery, Family Law, Licensing Law, Reparation Law, and Wills, Trusts and Executries. The success of the qualifications in Scotland has led to the foundation of a similar programme of courses in England and Wales.

Graduates of the courses, and only those graduates, are entitled to join the Society of Specialist Paralegals (SSP) and use the designation M.S.S.P (Member of the Society of Specialist Paralegals) after their name. The M.S.S.P designation includes a requirement to undertake CPD and abide by a complaints regime. Within the M.S.S.P designation there are different levels of membership from *Associate to Fellow*.

**The Society recognises the value of such 'quality marques' and specialist development and assessment, and in developing this scheme wishes to work towards complementary frameworks. Solicitors are often members of organisations in addition to the Society which regulates them, such as the Scottish Law Agents Society, or have embarked on the WS Society's 'Signet Accreditation'. The Registered Paralegal scheme will set standards and regulate the new entity, the Registered Paralegal, but the Society welcomes these independent quality marques as something which may appeal to prospective students of paralegal education.**

Whilst the Society is keen to see Phase I of the 'Registered Paralegal' status develop, it is not part of Phase I plans to look at 'specialist' accreditation or higher grades of 'Registered Paralegal'. It therefore wishes to work with organisations which provide 'quality marques' in the profession just now, and work towards higher grades of Registered Paralegal in Phase II of this work, in association with new Registered Paralegals, providers of legal education, employing organisations and the various paralegal associations which operate in Scotland.

Strathclyde University and Central Law Training have been consulted on the detail of what is being proposed, prior to the publication of the first consultation paper and prior to the publication of this paper. The Society is incredibly grateful for the time which they have dedicated to the development of this project. As they represent one of the largest interest groups, because of the numbers who have passed through their qualifications, **the Society looks forward to receiving the responses of the individual members of the SSP in relation to these advanced proposals.**

### **HNC or HND (Higher National Certificate / Diploma) in Legal Studies**

These are accredited by the Scottish Qualifications Authority (SQA) and are available throughout Scotland through local colleges. They are structured and delivered on behalf of those with no experience of legal practice but who, after completion of the course, will either seek employment in the legal services sector or embark on LLB study. Recently the HNC/HND has been reviewed, with the input of both the Scottish Paralegal Association and the Law Society of Scotland, and there is increased focus on the courses leading to paralegal work.

### **BA in Law and Management, or other legal degrees**

Many of these are taught by the same Law Schools as offer the accredited LL.B., and indeed in some cases students may have studied some of the same subjects in the same classes as those studying to enter the legal professions. However, these qualifications are not currently recognised as part of the route to qualifying as a solicitor.

### **LL.B**

This group is likely to increase with the number of places on undergraduate courses rising significantly now that there are more universities offering the LL.B. Some may also hold a Diploma in Legal Practice, but have not yet found a traineeship (at the time of publication of this paper in 2009, the number of training contracts registered in Scotland was 75% of the equivalent numbers in 2008).

## **Professional Development Awards (PDAs) (REVISED FROM 2009)**

These are shorter qualifications in particular areas of law which are often studied part-time or through distance learning. The delivery of these courses, the focus of which has been revised as a result of work done by the SPA and the Scottish Qualifications Authority to formalise a nationally recognised and independently externally quality assured qualification for the paralegal profession in Scotland. SQA now validate courses which are then capable of delivery by colleges across Scotland.

**The Society continues to encourage the development of these nationally recognised and validated qualifications which also promote wider access to the legal services sector by virtue of attracting the Scottish Government's Independent Learning Account (ILA) funding for the students on the courses.**

These are a welcome addition to qualifications which already exist in Scotland which would be considered by the Society as relevant for entry to the Registered Paralegal scheme. Consumers of legal education, the students themselves, will choose what qualification is right for them.

## **Conveyancing & Executry Practitioners**

The Society is already responsible for the regulation of these practitioners under the Public Appointments and Public Bodies etc (Scotland) Act 2003. The official Register of Conveyancing & Executry Practitioners in Scotland is maintained by the Keeper of the Registers of Scotland. Those registered hold a formal legal status, although take-up of the scheme has not been significant for a variety of reasons.

This group may also choose become registered under the proposed scheme as well as, or instead of, continuing as a Conveyancing and/or Executry Practitioners.

## **Society of Law Accountants in Scotland**

This was established as a professional association for law accountants, and is underpinned by a two-year seven-module courses. This has the backing of the Society and the qualification obtained at the end of the course is now recognised as the official Law Accounting Qualification for staff working in solicitors' offices in Scotland. The independent Board of SOLAS is provided with administrative support by the Society. Some members within certain firms may well have a paralegal role, as well as the well recognised law accountant role, and may wish to consider 'Registration'.

## **4. DO PARALEGALS UNDERTAKE IN-OFFICE TRAINING?**

It is currently the case that many paralegals will have worked in a solicitor's office for many years, receiving training and development on an ongoing basis from their supervising solicitors without ever taking a formal qualification. Others may have taken a qualification prior to starting work, but need in-office experience in order to be fully competent in their career as a paralegal. Either way, the highly nature of paralegal work requiring an understanding of the context in which highly practical work is undertaken suggests that both elements, a qualification and experience, are required before someone could be considered

qualified to the standard the Registered Paralegal project will set.

**Responses to the original consultation queried the transitional arrangements proposed in that paper. Those arrangements did not specifically seek to incorporate highly experienced paralegals, but focused on members of paralegal associations which already impose standards on their members, including the holding of a qualification. The Society has taken those responses into consideration and Section 5 of this paper proposes wider transitional arrangements for all highly experienced paralegals already working in Scotland (further detail is included in that section).**

## 5. WHAT WORK DOES A PARALEGAL UNDERTAKE?

Paralegals can perform a wide range of tasks, typically delegated to them by a supervising solicitor. Solicitors are responsible by virtue of [Standards of Conduct and Service](#) for properly supervising the work of all those work is delegated to, maintaining overall responsibility for the work produced.

**Draft competency statements, in specified areas of practice, comprise Paper 2 of this consultation, and we would be grateful for responses on whether the competency statements reflect the work of paralegals in those areas, when Paper 2 is launched.**

## 6. PARALEGALS, SOLICITORS, AND THE SCOTTISH LEGAL SERVICES MARKET

Paralegals are an essential part of the delivery of legal services in Scotland. The list of commonly held qualifications provided above also gives a flavour of the varied and demanding areas in which paralegals work, whether delivering high street legal services to individuals clients or supporting complex corporate and commercial work. There are already an estimated 10,000 paralegals working in Scotland, and it is recognised that with an estimated 10,000 paralegals working in Scotland, there is an incredibly wide range of work being done by paralegals with **varying levels of expertise and responsibility** in the office.

However, it is apparent that the public, clients, employing solicitors and those on the other side of legal transactions are not always clear what the role of a paralegal is. To ensure that all parties are clear on the roles of those involved in legal cases and transactions, the introduction of a voluntary registration and regulation scheme for paralegals is necessary. In addition, on 30<sup>th</sup> September 2009, the Scottish Government published the 'Legal Services (Scotland) Bill', which seeks to widen the legal services market in Scotland and allow for flexibility in structures, and competition. The Bill intends to allow solicitors to form partnerships with non-lawyers, and to seek outside investment; and to allow non-lawyers to own entities providing legal services. In terms of Phase I of the Registered Paralegal scheme, the Society intends to launch it as a first step towards formalising the role of paralegals in Scotland, the Bill itself being something which could affect the role of the paralegal in the future.

The Society believes its role, in Phase I of a project to introduce regulation for paralegals, is to introduce a base set of standards which those engaging with paralegals can rely on. For the paralegal-solicitor relationship, for example, this means introducing educational

requirements and a code of conduct which employing solicitors may rely on when employing paralegal staff in order to mitigate their risk, **with the overall responsibility for supervision of legal work remaining with the employing solicitors.**

The Society envisages Phase II of this work involving many things. This includes when the first tranche of Registered Paralegals have entered the scheme and it is up and running, working with them, their employers, and those involved in the education and training of Registered Paralegals, to look more closely at higher grades of Registered Paralegal and the respective responsibilities of paralegal and solicitor in the context of:

- those higher grades;
- the evolution of the Law Society of Scotland's work in relation to Standards; and
- the aforementioned Legal Services (Scotland) Act.

## 7. WHAT ARRANGEMENTS EXIST IN THE REST OF THE UK?

**The English and Welsh market has greater regulation and opportunity in this area.** The Society sees the benefits this has brought to the profession, paralegals and to clients. Key bodies in England and Wales include:

***ILEX (The Institute of Legal Executives)*** represents around 22,000 Legal Executives in England and Wales. *“Legal Executives are qualified lawyers specialising in a particular area of law. They will have passed the ILEX Professional Qualification in Law in an area of legal practice to the same level as that required of solicitors.”* They are often fee-earners in private practice and their work is usually directly charged to clients. Legal Executives have also won various other rights:

- They may act as Commissioners for Oaths
- With extended rights of audience Legal Executive Advocates can now represent their clients in the county and Magistrates' Courts
- ILEX is authorised under the Access to Justice Act 1999 to award 'litigation rights' to suitably qualified members
- ILEX manages complaints, under the oversight of the same Ombudsman as the Law Society/Solicitors Regulation Authority (SRA) in England and Wales

As an organisation, ILEX provides training and education; courses can be used as a route to entry as a solicitor. The organisation also has mandatory CPD, a Journal, and a Code of Conduct, and an active Pro Bono scheme. ILEX Tutorial College (ITC) is a leading provider of education to those wishing to become Legal Executives. At any one time it has around 5000 students enrolled making it a significant player in the English market. ILEX Paralegal Programmes (ILEX PP), provides a range of training, CPD, and courses. The qualifications achieved through ILEX PP can be transferred to the more formal route through ITC. ILEX also provides a route to qualifying as a solicitor. ILEX will participate in most high profile and governmental discussions on the legal services market in England and Wales.

**The Institute of Paralegals** is an incorporated, independent and not-for-profit professional body created to represent paralegals and legal support staff. The organisation was granted 'Institute' status by the UK government in 2005, after their application for this status was supported by the Law Society of England & Wales, the Bar Council, the Crown Prosecution Service, Citizens Advice and others.

The institute has been active in developing national competency standards for advice givers in the legal market, their work in this field has contributed to the Society's thinking in relation to the 'competency map' approach to educational standards (see below). Its most recent development is to have introduced, in October 2009, a 'Qualified Paralegal' status for paralegals in England and Wales. The Society continues to watch this development with interest.

**The National Association of Licensed Paralegals** (NALP) provides qualifications and career development for paralegals and solicitor's support staff. It aims to 'fill the gap' caused by the length of time it takes to qualify as a Legal Executive.

The aim of the Licensing provisions is to provide for the regulation of paralegals and to bring them in line with the rest of the legal profession. Whereas anyone can call themselves a 'Paralegal', only those who can fulfil the criteria laid down by the Association can call themselves a 'Licensed Paralegal'. By gaining qualifications and experience, paralegals can work, through the Association, towards gaining the goal of being 'Licensed'.

As a result of the of the career development offered by the Association, the University of Sunderland negotiated a programme with them to provide for their undergraduates on their LL.B. programmes the Association's Higher Diploma in Procedural Law. This allowed the University to offer students an alternative career path if they do not secure a training contract to go on to qualify as a Solicitor. The effect is that on Graduation the student will receive their Law Degree, the Association's Higher Diploma in Procedural Law and Graduate Membership of the Association. The University of Bradford are following suit.

**Q1. The Scottish legal profession is operating in a markedly different environment to that existing in 2008. What mechanisms and support can the Society put in place for paralegals and supervising solicitors, to ensure that the introduction of regulation for paralegals is successful?**

**Q2. Paralegals were significantly affected by the downturn. Should the Society relax the requirement for all Registered Paralegals to work 'under the supervision of a Scottish solicitor', in the case of 'out of work' Registered Paralegals who can be retained on the register of Registered Paralegals?**

**Q3. Registered Paralegals will be required to work under the supervision of a Scottish solicitor. Beyond that, and given the wide variety of work undertaken by paralegals in Scotland, how wide should the definition of 'Registered Paralegal' be (an obvious example might be the role of 'precognition agent')?**

**Q4. What is the future for paralegals in a rapidly evolving legal services market?**

**Q5. Throughout this paper there are references to the 'Phase I' launch, and a commitment to looking at the evolution of the scheme through a later 'Phase II'. Do you agree with this approach?**

## SECTION 3 WHY INTRODUCE REGULATION OF PARALEGALS?

### 8. WHY CREATE A 'REGISTERED PARALEGAL' STATUS NOW?

For a variety reasons, the regulator of the Scottish solicitor profession believes that it is best placed to introduce this scheme. The overwhelming driver for this project is the need to introduce a defined status for paralegals, which all those engaging with paralegals can rely on. **For the first time, there will be criteria to rely on, and standards underpinning the status of 'Registered Paralegal'. There will be clarity to the role of the paralegal in Scotland for everyone – in terms of qualifications, levels of experience, and standards expected in the course of legal work.** In addition, the following have been relevant considerations:

**Scottish Paralegal Association** – the SPA has engaged with Government, the Scottish Qualifications Authority, and the Law Society of Scotland for many years now, all with the view of professionalising paralegals in Scotland. The Scottish Government is interested in what may happen in this area of the legal service market:

- There has previously been debate among some individuals and associations about what groups should have 'rights of audience' in courts and tribunals in Scotland. In the past this has also been examined by the Scottish Government (for example, see the Report by the Research Working Group on the Legal Services Market in Scotland, Scottish Executive, 2006, Chapter 9). If these rights are extended, and paralegals are a group to which they might be extended, then it is in the public interest and profession's interest that these groups are regulated.
- At the time of this paper being launched, the Scottish Government has also published the Legal Services (Scotland) Bill 2009, and the relevance of that has been outlined above in this paper.

**New complaints regime** - Solicitors already bear the cost of any issues arising from inexperienced, unqualified, or dishonest paralegals. The protection given to consumers by the Master Policy and Guarantee Fund will cover payouts for work carried out by a paralegal, as this would have been supervised by an employing solicitors who should identify any issues. However, unlike the solicitors' branch of the profession, where regulation has been introduced to reduce the risk of a claim and associated costs, the only regulation of other staff within the legal office has been through the supervising solicitors. This is no longer seen as appropriate for the type and level of involvement paralegals now have in providing services to clients, and it is felt their should be standard setting for other staff taking part in the provision of legal service.

The Scottish Legal Complaints Commission has been operating for one year, and the Society must anticipate that it will be looking to build on what it has achieved this far. The Society wishes to demonstrate to the Commission that it views appropriate recruitment, training, supervision and support of non-solicitor staff carrying out legal work as a core responsibility of the employing solicitor and firm, but that underpinning that must be robust

standards for paralegals, with whom the public may deal more regularly than the named solicitor in a transaction.

**Developments throughout the UK** – the Society has maintained a watching brief over developments in England and Wales, and notes the opportunities available for paralegals to voluntarily join standard-setting organisations.

The Society firmly believes that as a key regulator of the Scottish solicitor profession, it is best placed to introduce a scheme such as this. The Society can offer the most effective and cost efficient membership services and regulatory oversight for paralegals, and for solicitors who employ them.

Scotland has its own unique legal system and it is appropriate for the Society which regulates, and the only independent representative organisation for the Scottish paralegal (SPA) to work together to create a bespoke scheme for Scotland which (i) represents the views of Scottish paralegals, (ii) is in harmony with regulation of solicitors by the Society, and (iii) can develop in line with the Society's own plans for entity-based regulation as a result of the Legal Services (Scotland) Bill.

The viability of this scheme may be compromised if organisations with a specific interest start to split membership, or run alternative schemes, ultimately making no one entity viable. Whilst interest groups continue to be welcomed, just as a variety of groups are recognised within the practising solicitor's profession, bringing these proposals to fruition would bring the benefit of clarity to the regulatory side of things.

**Transition from law school to training contract** – it has always been a competitive process to secure a training contract, and not all those who graduate from the LLB, or Diploma, will secure a training contract. Whilst the Society runs a variety of projects to manage students' expectations, we must look creatively at the opportunities for law graduates emerging from courses which the Society has accredited. A formal and regulated paralegal profession offers another option to these students, should they wish to continue to consider alternative careers in the legal services market. This ensures that a highly qualified cohort of individuals who have been educated in government funded education programmes have alternative career paths which use their knowledge and skills. It also increases the availability of skilled advisers to recruiting firms and to clients. This may also help some people take 'time out' of the qualification path to becoming a solicitor, returning to it later with experience learned as a paralegal. It is not anticipated that, in Phase I, qualification as a Registered Paralegal after an LLB, or LLB and Diploma, would result in 'discounts' from the route to qualification as a solicitor and specifically the two year 'training contract'. However, this is something the Society would be very keen to investigate as Phase II of this work. It is likely a Phase II project on this will be commenced once a cohort of Registered Paralegals have been qualified and the Society is able to work with them, and the solicitor profession, on that.

Transition from Registered Paralegal to solicitor – this links with the point above in relation to ‘discounts’ from the training period. Whether from Scotland, the UK, the EU (with particular requirements around the free movement of people and recognition of prior experience) or further afield. A more formal paralegal sector may assist in some of these cases, allowing those with experience as a ‘Registered Paralegal’ a more defined route to qualifying as a solicitor. Clear advice and guidance will need to be provided that becoming a ‘Registered Paralegal’ would not, at the start of the scheme, be a part of the route to qualifying as a solicitor. As above, the Society will look at transition from Registered Paralegal to solicitor, although this is likely to be a longer term piece of work.

**Legal standards** - Qualifications within the legal sector are being formalised in a number of areas. Skills for Justice, the dedicated Sector Skills Council and Standards Setting Body for the Justice sector, has developed a set of National Occupation Standards for a variety of roles and responsibilities, including related areas such as ‘Legal Advice’. The Society wants to ensure it continues to develop policy in line with best practice, and believes this scheme starts to introduce a more formal structure for paralegals in Scotland. The Society is grateful to Skills for Justice for its informal advice and support which has assisted in the development of this project, and will continue to liaise with Skills for Justice.

**Competitive advantage for employing organisations** – Firms with ‘Registered Paralegals’ working within them will achieve a competitive advantage, by visibly employing and offering a highly qualified and skilled workforce to their clients.

## 9. HOW MUCH WILL IT COST?

It will cost £100 per annum to join the scheme, the benefits of which are outlined above, and throughout the remainder of this paper.

The Society will encourage employing organisations to cover the costs of the Registered Paralegal’s registration fee, which follows common practice in relation to Practising Certificates for solicitors, which are largely paid, in bulk, by employing organisations.

This fee covers all benefits and requirements of the scheme, which involves the expertise of all three of the Society’s over-arching functions:

- the maintenance of the register of paralegals through a sophisticated Customer Relationship Management (CRM) database (**Membership function**)
- processing of complaints against Registered Paralegals (**Regulation function**); and
- as the scheme grows, likely creation of enhanced representative function for Registered Paralegals (**Representation function**).

Whilst there are set-up costs associated with a scheme such as this, which will only be recouped after the first few years of operation, this scheme is to be largely self-funded. This means that the cost of membership, regulation and ultimately will be funded by those who will receive the benefits, and by those business units where regulatory risks may lie. The fee will not, initially, be tax deductible for firms (as initially membership will not be compulsory) but it will be zero rated for VAT. The fee may be tax deductible for those who are self-employed.

The Society has significant experience in the functions which many now consider are required for paralegals (standard setting, CPD monitoring, etc.) for solicitors. The Society can offer cost-efficiency in a relatively small legal services market, compared to an organisation only carrying out these functions for paralegals. As solicitors will pay for at least some 'Registered Paralegal' memberships, this is of benefit to them.

**Q6. What are the benefits of this scheme being driven by the Law Society of Scotland? Do you agree with the approach taken that the Registered Paralegal scheme be fully integrated into the wider work and functions of the Society? For example:**

- *the scheme being open to LLB graduates;*
- *a commitment to consider the role of Registered Paralegals in line with future reviews of routes into the Scottish solicitor profession;*
- *CPD for Registered Paralegals being developed in line for new CPD rules for solicitors, to be introduced in November 2011;*
- *Registered Paralegal Code of Conduct being linked to solicitors' Standards, and developing outcomes in relation to the 'Day 1 trainee' and 'Qualifying Solicitor'; and*
- *The complaints process for Registered Paralegals being brought into line with the complaints process for Scottish solicitors.*

## SECTION 4 FINAL POLICY PROPOSALS

### 10 EVOLUTION OF PROPOSALS SINCE 2008: SUMMARY<sup>1</sup>

Having undertaken the original 2008 consultation, the Society is committed to proceeding with this scheme. This paper intends to provide more detail on the proposals, and highlight areas in which policy proposals have evolved, as a result of responses to the original consultation.

This paper also attempts to provide clarity on what the Society wishes to launch as 'Phase I' of this scheme, and what it envisages in 'Phase II'.

Amended policies being proposed in this document are outlined below, and further detail is provided later in the document:

***Introduction of a second transitional period before launch of the 'full route', in addition to the transitional period which was envisaged in the original consultation paper (for members of existing paralegal associations which already meet the criteria to be set scheme):***

- A transitional period would be created for those people who may not meet all of the specified entry requirements of the scheme, but who believe they already meet the standard of the Registered Paralegal.
- One example could be where a person has been trained to a very high standard, in-house, and subsequently worked as a paralegal for many years, but does not have the equivalent of what would be regarded as a 'formally recognised and assessed qualification'.
- Another example could be someone who is a member of a professional association, but fails to meet all of the criteria required for the transitional measures to apply as originally envisaged (for example 'grade' of membership), but they believe that they do still meet the standard of the 'Registered Paralegal'.
- A final example could be someone who meets the all of the entry criteria stated, both the holding of a qualification and in-office experience, but because of having exercised their free choice not to join a paralegal association do not qualify for the transitional arrangements for members of paralegal associations, identified in the original paper.

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<sup>1</sup> This is a summary section to highlight the evolution in policy thinking, and the detail is considered in a later section.  
Collette Patricia Paterson – November 2009

Detailed requirements for assessment of such applicants would require to be developed, **as the intention is not for this new transitional phase to act as a substitute for entry to the scheme as a ‘Trainee Registered Paralegal’, but rather an opportunity for highly experienced paralegals to have their expertise recognised during a transitional ‘window of opportunity’.**

For example, in the example given above where a person was not a member of a professional association but otherwise believed they met the standard of the Registered Paralegal, equivalent standards to those imposed by professional associations in terms of *qualification* and *experience* would easily be evidenced. However, for the purpose of evidencing a commitment to continuing professional development, and that there have been no complaints against the paralegal in question, additional assessment requirements are likely to be required. These might include:

- sign-off by supervising solicitor on both points; *and*
- where employment has not been continuously with that solicitor for more than two years, a series of references in relation to both points.

***Q7. Do you agree with the introduction of a secondary transitional period? What are the challenges of ‘Transition - Stage 2’ for paralegals, and supervising solicitors? What criteria should be established to ensure there are appropriate parameters for Stage 2?***

***Q8. How long should ‘Transition – Stages 1 and 2’ last, before the ‘full route’ is opened to those who wish to embark on the ‘Trainee Registered Paralegal’ stage?***

***Achievement of competencies to be assessed during the Trainee Registered Paralegal’s period of in-office training, rather than during the period of education or jointly during those periods:***

- A ‘formally assessed and relevant qualification’ will be required for entry to the Trainee Registered Paralegal status, in a relevant subject area. However, it will not be required for a provider to map the content of their courses to the Society’s competency map, because **assessment of knowledge being applied, for achievement of the Registered Paralegal status, will be made at the point of registration as a Registered Paralegal by the supervising solicitor.**
- Whilst what is taught on the course does not require to be mapped against the competency map, a course which covers ‘Debt Recovery’, for example, would be required for entry as a ‘Trainee Registered Paralegal (Debt Recovery)’.
- Trainee Registered Paralegals, and supervising solicitors, will agree on achievement of both legal domain competencies being applied, and generic competencies, at regular reviews over the course of the training year.

**Q9. This approach is intended to ensure that, during the ‘full route’, not only are a wide a category of existing qualifications competent for entry, but that pre-existing qualifications (which may have been achieved by paralegals many years ago) are competent for entry. Do you agree with this approach?**

**Composition of the Standing Committee to be widened, in order to represent organisations which from time to time may have a ‘relevant interest’ in the development of paralegals in Scotland.**

- The composition of the Standing Committee will allow for the evolution of the paralegal market in Scotland.
- Relevant bodies will be SPA, SSP, and SOLAS for launch, but this will require to be re-assessed as part of an agreed cycle.

**Q10. Do you agree with this approach, or are there other organisations which you believe have a ‘relevant interest’?**

**In recognition of the many possibilities for the role of paralegals in Scotland, there is a commitment to looking at higher grades of Registered Paralegal in ‘Phase II’:**

- The Society is intending, through Phase I, to launch a set of base criteria for the new ‘Registered Paralegal’, but recognises that there are a diverse range of paralegals working across Scotland, with different levels of expertise and responsibility in the workplace.
- Once launched, the Society will wish to work with Registered Paralegals themselves, their employers, course providers and paralegal associations, to identify higher grades of Registered Paralegals.
- There are links with the paralegal-solicitor relationship in terms of proper supervision of the Registered Paralegal, risk management and complaints.
- There are also links for the future role of the Society, those delivering legal services and those who wish to own entities delivering legal services, as a result of the Legal Services (Scotland) Bill.

**Q11. What are the benefits, and challenges, of introducing higher grades of Registered Paralegal?**

## SECTION 5

### WHO CAN JOIN THE SCHEME?

#### 11 HOW DOES SOMEONE BECOME A REGISTERED PARALEGAL?

The scheme will identify Qualification and Entrance Criteria, essentially the holding of a relevant qualification and an admissions check, both of which are discussed later in this paper. Having both qualifies someone for entry as a 'Law Society of Scotland Trainee Registered Paralegal'

#### 12 TRANSITIONAL ARRANGEMENTS

Irrespective of the qualification and entrance criteria referred to in the paragraph above, in establishing a new scheme such as this it is often necessary to identify a cohort of individuals **who already meet the standards** who can be 'transferred' from existing arrangements into a new scheme to assist with its establishment and early development.

As outlined above, this second consultation proposes to introduce two types of transitional arrangements:

- For existing members of paralegal associations already meeting the standards which the Registered Paralegal scheme seeks to set (Transition - Stage 1)
- For highly experienced paralegals who, although they do not meet the criteria specified for 'Transition – Stage 1', may already meet the standards which the Registered Paralegal scheme seeks to set (Transition - Stage 2)

It is proposed that all existing members of the Scottish Paralegal Association who meet the following criteria be automatically eligible for entry into the 'Registered Status':

- That they hold a **formally recognised and assessed qualification** relevant to their work as a paralegal (including, but not necessarily limited to, an HNC/HND in Legal Studies, a Strathclyde/CLT or Reward Training Qualification, or a degree with law in the awarding title from a Scottish University).
- That they have more than **two years work experience** gained under the supervision of a Scottish solicitor holding a current Practising Certificate from the Law Society of Scotland.
- That they have been **registered** with the Scottish Paralegal Association, at Grade 1 of the SPA grades scale, for a period of two years or more at the date of application.
- That they have **not been subject of any complaints** to the SPA for breaching the SPA Code of Conduct AND **have met the CPD requirements** in each year they have been registered.

As SPA members require their applications to the SPA to be signed by their supervising solicitor, this does not need to be checked again for those transferring into the 'Registered Paralegal' from the SPA.

Other SPA members will, of course, be eligible for entry to the scheme from the date of the launch, but will have to do so though 'Transition – Stage 2' or the 'full route' (both of which are discussed later).

There may be other groups the Society can work with to allow transition. Any group wishing to be considered under transition arrangements would need to provide evidence to the Standing Committee that members meet the same, or substantially similar standards, including all of the following:

- That the group hold a ***formally recognised and assessed qualification*** relevant to their work as a paralegal (including, but not necessarily limited to, an HNC/HND in Legal Studies, a Strathclyde/CLT or Reward Training Qualification, or a degree with law in the awarding title from a Scottish University).
- That the group have more than ***two years work experience*** gained under the supervision of a Scottish solicitor holding a current Practising Certificate from the Law Society of Scotland, and that this experience is signed off by a Scottish solicitor in the understanding that a conduct issue may arise if they provide inaccurate information
- That the group are ***registered*** with an established supervisory or educational body, and that the members being suggested for transitional arrangements have been registered with the group for a period of two-years or more at the date this scheme comes into effect.
- That the group have ***not been the subject of any complaints*** to that body for breaching that body's code, ethics, quality assurance arrangement *or* equivalent AND members have had to carry out, and ***have met the CPD requirements*** each year

The Standing Committee would consider each application from another body for recognition under the transition arrangements on its individual merits. **The Standing Committee would be constituted, and this process would commence, before the launch of Phase I.**

The Society of Specialist Paralegals has already noted interest in bringing elements of their membership within the transition arrangements, and requesting solicitors to sign off competency against the standards. The Society welcomes others notes of interest about transition arrangements.

If a group is recognised those members meeting the standard and wishing to join the 'Registered Status' will be subject to the transition arrangements and a simpler application process. If a group is not recognised individuals are still welcome to come forward under 'Transition – Stage 2' or the 'full route'.

## 14 TRANSITIONAL ARRANGEMENTS - STAGE 2

The second category of people to whom transitional arrangements will apply are those who, although they do not meet all of the requirements required for 'Transition – Stage 1', may already meet the standard the Registered Paralegal scheme is seeking to set.

Detailed requirements for assessment of these applicants would require to be developed, **as the intention is not for this to act as a substitute for any paralegal to avoid entering through the full route - as Trainee Registered Paralegals - but rather an opportunity for highly experienced paralegals to have their expertise recognised.**

For example, whilst equivalent standards to those imposed by professional associations in terms of **qualification** and **experience** may be evidenced easily, for the purpose of ensuring commitment to continuing professional development, and no complaints against the paralegal in question, additional requirements might be required. This might include:

- sign-off by supervising solicitor; and
- where employment has not been continuously with that solicitor for more than a certain number of years, a series of references in relation to continuing professional development and complaints.

It is proposed that both stages of 'transitional arrangements' are allowed for a defined period of time only, made clear at the initial launch date of the 'Registered Paralegal' status.

## 15. ENTRY – FULL ROUTE

After 'Transition – Stage 1' and 'Transition, Stage 2', entry to the scheme will be through the full route. All those entering the scheme will enter as a 'Trainee Registered Paralegal', and after a period of in-office experience will be signed off as a Registered Paralegal. For entry as a Trainee Registered Paralegal, applicants must demonstrate:

- That they hold a '**formally recognised and assessed qualification**'

## 16 WHAT IS A 'FORMALLY RECOGNISED AND ASSESSED QUALIFICATION'?

The Society believes firmly that entry to the scheme should be based on achievement of a 'formally recognised and assessed qualification'.

In considering what might constitute such a qualification, the Society identified the following things:

- That it would not be appropriate to artificially limit entry to the paralegal market, nor exclude the current highly respected training providers.
- That in Phase I of a scheme like this, a wide number of qualifications would be appropriate for entry.

- That, as already mentioned earlier in this paper, the Society is setting baseline criteria for the Registered Paralegal, and would most likely be looking at possibilities for Phase II of the scheme, including higher grades of Registered Paralegal, which could be linked to more formal accreditation of courses.

A ***formally recognised and assessed qualification*** will be one awarded by:

- a Scottish University or College; or,
- a University or College in another jurisdiction which has similar requirements in relation to teaching, quality assurance and assessment as a Scottish University or College; or,
- a training organisation which has similar requirements in relation to teaching, quality assurance and assessment as a Scottish University or College.

The course must cover an area of law relevant to the legal domains in the competency map (the next section deals with the competency maps). **What is taught on the course does not require to be mapped against the competency map, but a course in ‘Debt Recovery’, for example, would be required for entry as a ‘Trainee Registered Paralegal (Debt Recovery)’.**

The Society requires a formal period of in-office training before sign-off of a paralegal as a ‘Registered Paralegal’ (discussed in the next section) and it during the training period that evidence of knowledge of the law in the competency map being **applied**, as well as skills being **applied**, will be assessed at regular reviews and signed off at the end of the training period by the supervising solicitor.

It should be noted that these qualifications might be delivered in a variety of different format (for example; day release, evening classes or distance learning). They may be provided ‘in house’, with an external training organisation coming into an organisation to provide a tailored qualification to a particular group of staff. They may even be provided directly by an employing organisation, who may have an externally verified training status (such as through the arrangements for SVQs).

Verification of the satisfactory attainment of a qualification will be required (usually through presentation of appropriate certificate or transcript). As part of the application process the student will authorise the Society to check with the provider that they have the stated qualifications. The Society will periodically carry out samples to ensure the integrity of the system.

It is hoped in the future that the Society can work with all providers of paralegal training to ensure that qualifications likely to meet the entrance requirements are ‘badged’ as such. There is nothing to preclude providers from marketing courses as suitable for entry to the scheme. However, the Society will not accredit any courses during Phase I of the scheme, instead welcoming all existing paralegal courses as suitable for entry to the scheme.

***Q.12 Should the Society move towards more formal accreditation of courses in future phases of this scheme?***

## 17 IS THERE A CHARACTER AND SUITABILITY TEST?

Yes. Many professional associations and regulatory bodies also perform 'character and suitability' or 'fit and proper' tests on applicants. These may range from requiring 'enhanced' (teaching) or 'standard' (solicitors) 'Disclosures', or by other means such as self-declaration and reference checks.

The Society must balance setting an appropriate standard against creating artificial barriers to entry. The Society must also be careful that its policy is proportionate to risk, and takes into the consideration of cost (a 'standard' disclosure requirement would add a minimum of 25% to the currently proposed initial fee).

The following approach is proposed, for paralegals:

- A self-declaration of criminal convictions, bankruptcy, or discipline by another regulator
- A process, overseen by a 'Panel' if there is an issue – similar to a 'non standard' application (discussed below)
- A duty to report any change in circumstance – with it being disciplinary offence to fail to declare at any point
- The possibility of a structured character reference being requested for new applicants.

Again, as mentioned repeatedly in this paper, during the operational stage of Phase I of the scheme, the scheme will be monitored with a view to Phase II building on the original scheme's success. The 'character and suitability' test will also be monitored in the light of:

- The relationship between self-declaration, and complaints arising against Registered Paralegals during Phase I.
- proposed higher grades of Registered Paralegals, for Phase II of the scheme, affecting the respective responsibilities of paralegals and solicitors in Phase II; and
- the delivery of legal services by alternative business structures in Scotland, by virtue of the Legal Services (Scotland) Bill, also affecting the respective responsibilities of paralegals and solicitors,

***Q.13 The Society will be developing the practical detail on the character and suitability test. Do you have suggestions?***

## 18. IS A PERIOD OF IN-OFFICE TRAINING REQUIRED?

Yes. Throughout our discussion with stakeholders it has been the consistent view that, because the work is highly practical, a vital part of qualifying as a 'Registered Paralegal' must be a period of in-office experience, under the supervision of a Scottish solicitor holding a current

Practising Certificate from the Law Society of Scotland. This period will test knowledge, skills, attitudes and values being **applied**.

The Society is aware it must balance the need for a formal and supervised period of training, with ensuring that any arrangements put in place are proportionate and do not act as an artificial barrier to those who may wish to qualify as 'Registered Paralegals'.

**It is proposed that, during the 'full route', a period practice equivalent to one year's supervised practice should be required prior to registration as a full member.** (for example, two years of working two and a half days per week).

Those wishing to become 'Registered Paralegals' will enter the scheme as a 'Trainee Registered Paralegal'.

During the training period the **paralegal** will be required to maintain a simple log (or portfolio) of their work, mapping experience (from their qualification and from their in-office work) against the 'competency map'. This will be captured through the Society's CRM database, and the Registered Paralegal's dedicated portal, both of which have already been piloted in 2009.

During the training period the **supervising solicitor** will be required to have a quarterly meeting (start, end of month 4, end of month 8, and a completion meeting) with the paralegal, during which:

- They sign off the log that that paralegal has kept of their work as accurate
- They appraise the overall performance of the paralegal against a set standard
- In the final meeting, that they sign-off the paralegal as having reached the standard of 'Registered Paralegal ( *area e.g. Debt Recovery*)'.

It is noted that these arrangements should provide structure and ensure the requirements of the competency map are met, whilst at the same time fitting well with the arrangements most firms will already have in place for appraisal and review.

The Society recognises that, where a paralegal has significant levels of in-office experience prior to embarking on the qualification required for the scheme, that the Registered Paralegal and supervising solicitor may agree before the training year is over that competence has been achieved. The Society is keen to monitor the performance of the first cohort of Trainee Registered Paralegals in Phase I, and build a policy for a 'streamlined process', in association with associated development work on higher grades of Registered Paralegals, for launch in Phase II.

**Q.14 Would you be willing to nominate yourself, or your Trainee Registered Paralegal for a small project to assess how this 'streamlined' process may work in Phase II?**

## 19. WHERE CAN THE COMPETENCY MAP BE FOUND?

This section outlines how the competency map will be used in assessing applicants' entry to the scheme, whilst Paper 2 will include the competency map itself. Paper 2 of this consultation will be launched at a later date.

All applicants who are 'grandfathered' into the scheme through 'Transition – Stages 1 and 2' will be deemed by their supervising solicitor to have met levels of competence defined in the Registered Paralegal 'competence map' (maintained by the Standing Committee). Thereafter, those who enter the full route, as a Trainee Registered Paralegal, will be asked to demonstrate their competence against that sum 'competence map'.

The competencies fall into three categories:

- *Base skills, knowledge, attitudes and values for Registered Paralegals.*
- *Skills, knowledge, attitudes and values in particular subject areas.* Drafts have currently been completed for six areas – conveyancing, wills and executries, debt recovery, civil litigation, criminal litigation and liquor licensing. **These should be treated as a guide to the skills, knowledge, attitudes and values expected of Registered Paralegals, using particular practice areas which can be regarded as 'guide areas'. They are not an exhaustive list in relation to who is able to join the scheme.**
- *Skills, knowledge, attitudes and values in subject areas other than the 'guide areas'.* A questionnaire is provided by the Society, which was used to determine the 'guide areas' and is to be used to determine further categories of Registered Paralegal. **This is important, to ensure that no paralegal is disadvantaged from joining the scheme. It is anticipated that from Stage 1 transition, in addition to grandfathering members in the 'guide areas', paralegal associations and supervising solicitors will be invited to complete the questionnaire for other areas on behalf of an applicant for grandfathering. This would form part of the required 'sign off' by those organisations as to the section of their members they are guaranteeing to meet the standard of the Registered Paralegal (that having been equally guaranteed by the paralegal's supervising solicitor).**

## 20. WHAT NON-STANDARD APPLICATIONS DOES THE SOCIETY ANTICIPATE?

Whilst the scheme intends to create equal opportunity for all paralegals who believe they already meet the standard of the Registered Paralegal, through Stage 1 and Stage 2 transition, it is anticipated that at the stage the Stage 2 'window of opportunity' is closed, and the only option to join the scheme is through the 'full route', that non-standard applicants will approach the Society. Although it is not possible to create an exhaustive list because such cases will be considered on a 'case by case' basis, examples might include:

- A person from a jurisdiction other than Scotland who comes to work in the legal profession in Scotland and wishes to join the scheme;

- A person who does not work ‘under the supervision of a Scottish solicitor’ but who works in an associated environment which could be deemed to be equal to the solicitor supervision required by the scheme.
- Generally any applicant who does not meet the criteria set by the scheme and who wishes to apply for a waiver, because their application is not standard.

It is appropriate in such a scheme to set high standards, but to ensure that it is possible, through application for a waiver of the scheme’s requirements, for non-standard applicants to approach the Standing Committee with a view to stating their suitability for the scheme.

This is similar to the approach taken by prospective trainee solicitors, who are able to apply for a waiver of any of the regulations contained in the Admission as a Solicitor (Scotland) Regulations 2001.

**Q. 15 This test is likely to be strictly applied, given the Introduction of ‘Transition – Stage 2’. However, it is important to acknowledge that non-standard applicants will continue to approach the scheme. What is your view?**

## 21. DEALING WITH NON-STANDARD APPLICANTS

The competency map approach should assist in the consideration of ‘non standard’ applications.

Where an application does not fit the criteria which staff have delegated authority to authorise, a Panel (as described above) will consider the application.

A process will be put in place where:

- The paralegal is informed their application is being referred to a Panel
- The paralegal will be asked to provide additional information (including specific requests, and any items they feel are relevant)
- The Panel will meet to consider the application, and can decide either to accept the applicant, to interview the applicant, or to refuse the application
- Any interview will be conducted by the same Panel as reviewed the paperwork, and will be a structured discussion around areas of concern
- The outcome of an interview may be to accept or refuse the application for entrance
- A refusal, at any stage, must be accompanied by written details of the reason
- In all cases the standards referred to in decision making will be the competency map and the Code of Conduct
- There will be an appeal process in the event that non-standard applications are refused.

## SECTION 6 CONDUCT AND SERVICE, CPD, AND COMPLAINTS

### 22. CODE OF CONDUCT

The Scottish Paralegal Association has for a number of years had a Code of Conduct, which was introduced with the assistance of the Law Society of Scotland. The Society has had revised Standards of Service and Conduct in place since January 2009.

It is proposed that a new Code for 'Registered Paralegals' is produced, taking into account the revised Standards of Conduct and Service for solicitors, and that it be applied to all 'Registered Paralegals'.

The Code of Conduct, and the Competency Framework outlined in Appendix A, are together the measure of the standard with which the Society expects Registered Paralegals to comply. They are therefore the basis on which complaints against Registered Paralegals will be investigated. At the time of this consultation, a Code of Conduct is currently being developed by the SPA and the Society jointly.

***Q.16 Do you believe the Code of Conduct should map closely with the Society's Standards for Scottish Solicitors, as well as create specific standards for Registered Paralegals?***

***Q.17 Would you be willing to join a reference group looking at the detail of the Registered Paralegal Code of Conduct, which is under development and will be trailed in advance of the launch of 'Phase I'?***

### 23. CONTINUING PROFESSIONAL DEVELOPMENT

The Scottish Paralegal Association already has a CPD requirement for its members. This is based on a requirement to undertake 10 hours of Continuing Professional Development (CPD) in each practice year. A maximum of 4 of these hours may be undertaken by way of private study; the balance will require to be taken in group study. The Society of Specialist Paralegals also has CPD requirements.

It is proposed that in Phase I of the scheme 'Registered Paralegals' will be required to meet similar requirements. In addition, in line with the Society's confirmation at the May 2009 that a revised CPD regime will be implemented for the solicitor profession from the commencement of CPD year 2011/2012 (November 2011), that as part of Phase II the evolution of CPD for Registered Paralegals is in line with new policies on CPD for solicitors.

**The original consultation proposed the possibility of a CPD requirement of 20 hours for the Registered Paralegal scheme, 10 hours more than is currently required by SPA of its members.**

**At the time of the 2008 consultation on Registered Paralegals, the recommendation of the Society's Education and Training Committee was to increase CPD for solicitors from 20 to 30 hours. However, final policy in relation to CPD requirements, which has been agreed after the close of the 2008 consultation on Registered Paralegals, sees the CPD requirement remain at 20 hours.**

**As it is likely that CPD policy for solicitors will be re-visited in line with developments in lifelong learning across professions, it is therefore proposed that during Phase I of the scheme, the CPD requirement for Registered Paralegals remains at 10 hours and that Phase II CPD requirements develop in line with changes to solicitors' CPD.**

**Such developments will look at both (i) CPD hours and (ii) flexible approaches to achieving life-long learning, for Registered Paralegals.**

In April 2009, the Society piloted a CRM database which will underpin the Registered Paralegal scheme, using SPA members' renewal cycle as the test data.

This pilot was undertaken in order to identify improvements to the system, and in that regard was successful. Between April 2008 and April 2009, therefore, SPA members who renewed their memberships online are logging CPD electronically in their own dedicated portal.

The Society is grateful to the Scottish Paralegal Association for allowing the renewal of their members to be used as the basis for this pilot. With further improvements to, and training on, the systems planned, the Society is confident that Phase I of the Registered Paralegal scheme will launch with a supportive IT infrastructure.

As the Society has in September 2009 commenced the implementation of a new CRM system for the Society's members (over 10,000 solicitors), it is likely that Phase II of the Registered Paralegal scheme will involve the migration of the pre-existing site for Registered Paralegals with a wider IT system for all of the Society's members, stakeholders, and other customers.

Finally, the Society hopes a wide range of providers will continue to offer, and will develop, CPD training for paralegals, as currently happens in the solicitor market. In the same way the Society must ensure the profile of all educational opportunities which prospective Trainee Registered Paralegals can take advantage of in order to find the best method, for them, to join the scheme, a free website 'link' to all training providers who note interest will also be provided on CPD opportunities.

## 24. COMPLAINTS IN RELATION TO CONDUCT

Firstly, it is worth noting that very few complaints against paralegals are anticipated. This is because supervising solicitors retain responsibility for work undertaken. However, in setting a scheme with high and robust standards, the Society recognises that sanctions must be put in place where Registered Paralegals do not uphold the high standards this scheme seeks to set.

It has been necessary, therefore, to identify the situations in which complaints against Registered Paralegals are likely to arise. These are:

- Complaints which are directly about a Registered Paralegal and which, although a complaint against the solicitor/employing organisation in question requires to be undertaken in the first instance, requires to be investigated in its own right.
- Complaints which do not name a Registered Paralegal when raised but which, in the course of a complaints investigation, name a 'Registered Paralegal' and therefore require to be investigated.
- Complaints against a Registered Paralegal's conduct other than in the course of their work - in other words a private life issue.

## 25. COMPLAINTS IN RELATION TO SERVICE

If a client is dissatisfied with the *service* they have received, then they will be directed to make their complaint firstly to the employing firm and, if a satisfactory outcome is not achieved, to the Scottish Legal Complaints Commission (the 'Commission'). This is because currently work carried out by a paralegal is still the responsibility of the employing solicitor.

However, it may be that the outcome of such a complaint, if upheld against the solicitor, identifies that the issue also, or primarily, relates to a paralegal's conduct under that solicitor's, or firm's supervision. For example, a paralegal has lied to a client.

**The Society is liaising with the Commission in relation to service complaints which may, in the course of their investigation, name a Registered Paralegal.**

## 26. HOW WILL COMPLAINTS BE MANAGED?

**The original consultation was held in the months prior to the commencement of the work of the Commission in relation to service complaints. At that time, it was suggested that the complaints regime could potentially be handled by the Standing Committee and mirror the complaints process for solicitors in Scotland.**

**People who engage legal services are now dealing with the very early stages of settling into a revised complaints regime in respect of legal services in Scotland.**

**Rather than the Standing Committee acting as an investigative body in its own right in**

**relation to complaints, as it will in relation to admissions matters, it is suggested that the Society's existing complaints processes are used to deal with complaints arising against Registered Paralegals:**

- The Regulation Department of the Society and its associated Professional Conduct Committee, **being experts in this area**, deal with the complaints.
- the Standing Committee (or a member of the Society's staff with authority delegated from the Standing Committee to assist) would be available for referral (where the Professional Conduct Committee is seeking information from the register of Registered Paralegals, for detail on supervising solicitors, for example)
- The Standing Committee would maintain a record of all complaints against Registered Paralegals, and their outcomes.

**In relation to Registered Paralegals, the Society proposes the following sanctions:**

- Reprimand
- An order for further training
- Restriction of the work the Registered Paralegal is able to undertake
- Suspension or removal from the register of Registered Paralegals.

**Where a complaint is upheld and a sanction put in place, a Registered Paralegal will have a right of appeal.**

**Whilst large numbers of complaints against Registered Paralegals are not anticipated, development work requires to be done to develop a suitable complaints regime. Work has commenced on this, and will continue during the consultation phase. This has included opening lines of communication with the Commission.**

## SECTION 7

### HOW WILL THE SCHEME OPERATE?

#### 27. IN ASSOCIATION WITH THE SPA

It is proposed that the Law Society of Scotland and the Scottish Paralegal Association will agree a 'memorandum of understanding', in recognition of the invaluable partnership with SPA in bringing this scheme to fruition. This document will outline the roles and responsibilities of the Society, the SPA, and the Standing Committee (see below). The document will be negotiated and agreed prior to the formal launch of any scheme originating from these proposals. The document will cover the initial two-year period of operation, after which time it will be reviewed.

#### 28. OVERSIGHT OF THE SCHEME BY A STANDING COMMITTEE

It is proposed that a Standing Committee be established to oversee the scheme and its operations. This Committee would comprise the following members:

- two members nominated by the Council of the Law Society of Scotland (nominated from among the membership of Council or a relevant Committee)
- two representatives of the Scottish Paralegal Association, the independent representative organisation for paralegals in Scotland, and partner in the Registered Paralegal project.\*
- representatives of paralegal associations with a 'relevant interest' in the development of paralegals in Scotland, including the Society of Specialist Paralegals (SSP) and Society of Law Accountants in Scotland (SOLAS).\*
- one solicitor (not member of Council or Committee)
- two ordinary 'Registered Paralegals', with elections taking place once the first 100 registrations have taken place
- an additional three members will be 'public interest' members, recruited by public advertisement following the Society's policy on committee appointments. These members should not be, or have been, a solicitor, paralegal, advocate, or equivalent, within any jurisdiction

**\*The original consultation proposed that two representatives of the SPA, plus a representative of each of the SSP/SOLAS, would comprise paralegal representatives on the Standing Committee.**

**This second consultation proposes a wider test, whereby 'representatives' of paralegal associations with a 'relevant interest' in the development of paralegals in Scotland should be capable of forming part of the Standing Committee.**

**A 'relevant interest' is likely to be as representative body for a significant number of paralegals in Scotland, but it will be a formal test (to be developed) which will require to be satisfied by the Standing Committee.**

**It is necessary to identify suitable representatives for the initial composition of the Standing Committee and launch of the scheme, drawing on expertise available in the paralegal profession now. It is suggested that, at launch, those bodies with a 'relevant interest' are SSP, and SOLAS.**

No member of this committee is to be an employee of the executive of any of the relevant organisations (The Law Society of Scotland, SPA, SSP, or Strathclyde/CLT).

If the Standing Committee is comprised as above at launch, the committee will be able to operate if quorate, but must seek to fill any vacant positions as soon as is reasonably practicable.

This Committee would be responsible for oversight of the scheme, and Panels comprised of committee members (see below for details) would deal with individual, non-standard entry cases. The Scheme will specify appropriate governance arrangements.

This Committee shall appoint 'Panels' of three members, as and when required, to deal initially with individual entrance decisions. These 'Panels' must comprise a solicitor, a paralegal, and a public interest member, and all members must be present for the Panel to be quorate. The panel will be chaired by the solicitor member. The 'Panels' will have full authority to authorise or decline an application for entrance.

Members of a Panel which has made an original decision, which has become the subject of an appeal, will not take part in deciding any appeal remitted to the Standing Committee.

Significant changes to policy or process would require to be endorsed by the Council of the Society, and through whatever arrangements the SPA considers appropriate.

An initial Scheme of Operation will be approved and published by the Council of the Society and by the SPA. The Standing Committee will be responsible for ensuring the requirements of the scheme are met, that any issues about the operation of the scheme which require to be amended are timeously raised with the Council of the Society and with SPA, and that appropriate solutions are recommended.

Day to day operation of the Scheme will be managed and administered by staff of the Law Society of Scotland, under the supervision of the Standing Committee.

The initial Scheme of Operation will specify what tasks may be delegated to a sub-committee, working party, and/or to the executive staff of the Society made available by the Council of the Society to manage and administer the scheme.

## SECTION 8

### THE SCHEME – OTHER INFORMATION

#### 29. REQUIREMENTS AND BENEFITS

The following are associated requirements, and benefits, of the scheme:

- The Society will maintain and publish a 'Register' of paralegals who have met all the requirements and hold the 'Registered Paralegal' status. An annual renewal will be required.
- Those on the 'Register' will be licensed to use title 'Law Society of Scotland Registered Paralegal' (and any appropriate grade, such as 'trainee', 'member', or 'senior paralegal') after their names, including on notepaper, websites, and promotional material.
- The Society reserves the right to take appropriate action against anyone using the title without the permission (in the form of a license issued upon registration, and at renewal each year thereafter).
- Membership of the 'Registered Status' will not preclude members from holding membership of other professional associations, so long these do not create conflict in terms of ethical codes.
- Membership of the Scheme can also incorporate membership of the SPA. In recognition of (i) the existence of different paralegal associations across the country and that some Registered Paralegals may have a pre-existing association with one of those associations which they wish to maintain alone, and (ii) that some Registered Paralegals may not wish to be associated with any independent organisation for paralegals in addition to their status as a 'Registered Paralegal', it is proposed that applicants will be entitled to opt out of membership of the SPA as they wish.

***Q.18 Do you think introducing this 'opt out' of SPA membership is fair and creates equal opportunity for all paralegals to join the scheme, regardless of other affiliations they may have in relation to their work as a paralegal?***

## APPENDIX A SUMMARY OF QUESTIONS

The questions below have been asked throughout the body of this consultation paper. For ease, please respond using the electronic form which you can access [here](#). Whilst the Society would prefer you respond in this way, you can alternatively respond to the questions by email - [registeredparalegals@lawscot.org.uk](mailto:registeredparalegals@lawscot.org.uk)

**Name/organisation (if organisational response):**

**Email address:**

**Current role/occupation:**

**Organisation (if not organisational response):**

**Number of years in practice (if solicitor):**

**Number of years in practice (if paralegal):**

**Equality and Diversity:** The Society has to meet legal commitments in relation to Equality and Diversity. Rather than collect 'tick box' data on your race, religion and belief, sexual orientation, age, or any disability you may have we felt it was more appropriate to simply ask if any of these factors may influence your responses, the standards you feel paralegals should meet, or the way in which the Society finalises its policy in this area?

***Q.1 The Scottish legal profession is operating in a markedly different environment to that existing in 2008. What mechanisms and support can the Society put in place for paralegals and supervising solicitors, to ensure that the introduction of regulation for paralegals is successful?***

***Q.2 Paralegals were significantly affected by the downturn. Should the Society relax the requirement for all Registered Paralegals to work 'under the supervision of a Scottish solicitor', in the case of 'out of work' Registered Paralegals who can be retained on the register of Registered Paralegals?***

***Q.3 Registered Paralegals will be required to work under the supervision of a Scottish solicitor. Beyond that, and given the wide variety of work undertaken by paralegals in Scotland, how wide should the definition of 'Registered Paralegal' be (an obvious example might be the role of 'precognition agent')?***

***Q.4 What is the future for paralegals in a rapidly evolving legal services market?***

***Q.5 Throughout this paper there are references to the 'Phase I' launch, and a commitment to looking at the evolution of the scheme through a later 'Phase II'. Do you agree with this approach?***

**Q.6 What are the benefits of this scheme being driven by the Law Society of Scotland? Do you agree with the approach taken that the Registered Paralegal scheme be fully integrated into the wider work and functions of the Society? For example:**

- **the scheme being open to LLB graduates;**
- **a commitment to consider the role of Registered Paralegals in line with future reviews of routes into the Scottish solicitor profession;**
- **CPD for Registered Paralegals being developed in line for new CPD rules for solicitors, to be introduced in November 2011; and**
- **Code of Conduct linked to solicitors' Standards, and developing outcomes for achievement of the 'Day 1 trainee' and 'Qualifying Solicitor'?**
- **The complaints process for Registered Paralegals being brought into line with the complaints process for Scottish solicitors**

**Q.7 Do you agree with the introduction of a secondary transitional period? What are the challenges of 'Transition - Stage 2' for paralegals, and supervising solicitors? What criteria should be established to ensure there are appropriate parameters for Stage 2?**

**Q.8 How long should 'Transition – Stages 1 and 2' last, before the 'full route' is opened to those who wish to embark on the 'Trainee Registered Paralegal' stage?**

**Q.9 This approach is intended to ensure that, during the 'full route', not only are a wide a category of existing qualifications competent for entry, but that pre-existing qualifications (which may have been achieved by paralegals many years ago) are competent for entry. Do you agree with this approach?**

**Q.10 Do you agree with this approach, or are there other organisations which you believe have a 'relevant interest'**

**Q.11 What are the benefits, and challenges, of introducing higher grades of Registered Paralegal?**

**Q.12 Should the Society move towards more formal accreditation of courses in future phases of this scheme?**

**Q.13 The Society will be developing the practical detail on the character and suitability test. Do you have suggestions?**

**Q.14 Would you be willing to nominate yourself, or your Trainee Registered Paralegal for a small project to assess how this 'streamlined' process may work in Phase II?**

**Q. 15 This test is likely to be strictly applied, given the Introduction of 'Transition – Stage 2'. However, it is important to acknowledge that non-standard applicants will continue to approach the scheme. What is your view?**

**Q.16 Do you believe the Code of Conduct should map closely with the Society's Standards for Scottish Solicitors, as well as create specific standards for Registered Paralegals?**

***Q.17 Would you be willing to join a reference group looking at the detail Registered Paralegal Code of Conduct, which is under development and will be trailed in advance of the launch of 'Phase I'?***

***Q.18 Do you think introducing this 'opt out' of SPA membership is fair and creates equal opportunity for all paralegals to join the scheme, regardless of other affiliations they may have in relation to their work as a paralegal?***

***Q.19 The Society is committed to ensuring equality and diversity issues are considered in all our work. Do you think that any groups of solicitors, paralegals or clients, covered by equality legislation, may be affected more than others by the arrangements set out in this policy position paper?***

**END**