



Regulation of Legal Services (Scotland) Bill

What is it and why does it matter?

What is the new legislation about?

The Bill represents the biggest shake up of the regulation of solicitors in well over a decade. It would introduce new forms of regulation over legal businesses, changes to the way complaints are handled, and new restrictions over who can and cannot call themselves a lawyer. Alarming, it also proposes sweeping new powers for Scottish Ministers to, for the first time, intervene directly in the regulation of solicitors.

Why has this Bill come about?

Much of the legislation covering legal regulation is well over 40 years old. It's why the Law Society went to the Scottish Government back in 2015 to argue for reforms to modernise the regulatory framework. Scottish Ministers set up an independent review of legal services regulation in 2017 (the Robertson review) and consulted on the report recommendations in 2021. The Bill is the culmination of this work.

What does the Law Society like about the Bill?

We welcome many of the reforms, not least because we requested them. New proposals for business (entity) regulation and restrictions around who can call themselves a lawyer are positive. There are also some process improvements which should help speed up elements of our work to take regulatory action when we need to. However, many of the suggestions we made for system improvements are absent from the Bill, particularly around complaints handling. We hope this can be addressed as the Bill progresses through parliament.

What is the biggest problem with the Bill?

Of greatest concern is the Scottish

Government's attempt to get exceptional new powers of intervention over how legal professionals are regulated. These powers, which we have not identified in any other western democracy, risk undermining the rule of the law and the independence of Scotland's legal sector from the state. A key component of a free and democratic society is having an independent legal profession that can challenge government and protect citizens from the excessive use of power by the state. That is why it is so concerning that the state, through government, could direct or control how legal professionals work.

What powers does the government want to have?

The Bill would empower the Scottish Government to direct the Law Society to take certain action, to censure or fine us as a regulator, or even remove our regulatory functions altogether. Scottish Ministers also want, for the first time, a direct role in approving rules on how existing law firms operate and the practice of solicitors. The Scottish Government could even appoint itself as a regulator of legal businesses. It opens the prospect, never before suggested, that the state could regulate law firms directly. These are levels of political control and

The Bill would introduce



new regulation over legal businesses



changes to complaints handling



restrictions over who can call themselves a lawyer



new powers for Scottish Ministers to intervene in the regulation of solicitors

Proposed Ministerial powers to:



Section 19 & 20

Direct the Law Society to take certain actions. Censure, fine us, or remove our regulatory functions



Section 41

Approve rules on the way law firms operate, and the conduct of solicitors



Section 49

Appoint itself as a direct authorisation body or regulator of legal businesses



Regulation of Legal Services (Scotland) Bill

What is it and why does it matter?

intervention never before seen in the Scottish legal sector.

Why is the Scottish Government not progressing the Robertson Report proposal for a new independent regulator?

In her report, Esther Robertson recommended creating a new independent regulator of solicitors. There were serious concerns over the costs of setting up and running a new body. There was also worry about having a politically appointed body regulating the legal sector. The Scottish Government chose not to take forward that model. Instead, the legislation proposes to strengthen the independence of the Law Society's existing Regulatory Committee, making it more transparent and accountable with a new requirement for annual reporting to parliament on its work.

Does the Bill finally sort out the problems in the complaints system?

The system for dealing with legal complaints is not working. The current set up is too slow, too rigid, too complex and increasingly expensive. The Bill includes positive changes which should help the Scottish Legal Complaints Commission deal with the eligibility stage of complaints more quickly. We also welcome new provisions allowing the Law Society to start our own complaints investigations when we want to, without having to go through the SLCC.

However, we want the Bill to go further and have sought new powers which would allow us to dispose of conduct cases early in limited circumstances.

We also want to widen our limited powers to suspend a solicitor on an interim basis when possible serious wrongdoing is uncovered or to restrict a solicitor's practising certificate when necessary.

What about the new restriction on calling yourself a lawyer?

We have long argued for new controls over who can call themselves a 'lawyer'. It is concerning that anyone, including those without any legal education, qualification or accreditation, can legitimately call themselves a 'lawyer' and offer legal services for profit. We believe the current unrestricted use of the title 'lawyer' poses a significant risk to consumers who do not differentiate between a 'solicitor' and a 'lawyer' and are therefore potentially being misled.

We think the provision in the Bill could be even stronger and will make this argument.

What happens next?

The Bill will first be considered by the Scottish Parliament's Equalities, Human Right and Civil Justice (EHRCJ) committee which will submit a report to the whole parliament. The Bill would then return to committee where MSPs can propose specific amendments. The revised Bill then returns to the whole parliament again for debate and amendment. After that, if the final Bill is passed, it goes forward for Royal Assent.

The Regulatory Committee

would become more independent, transparent and accountable



with a new requirement for annual reporting to parliament

There are changes which should help the SLCC deal with the eligibility of complaints more quickly,



and new provisions allowing the Law Society to start our own complaints investigations

Next steps

- 1 The Bill will be considered by the Scottish Parliament's EHRCJ committee
- 2 The EHRCJ will submit a report back to parliament
- 3 The Bill returns to the EHRCJ, where MSPs can propose amendments
- 4 It returns to parliament for debate and, if passed, will become law

For more information and updates, visit the 'Legal Services Regulation' page on our website:

www.lawscot.org.uk/research-and-policy/legal-services-review/