

# Consultation Response

Invitation to share your views  
on the UK Trade Strategy

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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.



## How we can facilitate trade for businesses and provide practical tools to support them to drive growth through trade now and in the future?

The legal sector is one of Scotland's most competitive, with almost 1,200 law firms operating and offering quality legal advice. That sector is a diverse one, from global, multi million pound businesses to a network of smaller practices operating on the high streets of our villages and towns the length and breadth of the country. More and more Scottish solicitors are choosing to live and work, not just in other parts of the UK but across the world, retaining their Scottish qualification as a proud badge of professional excellence.

As a whole, the legal sector sits at the very heart of the Scottish economy. It accounts for tens of thousands of high quality jobs. It makes a contribution to the Scottish economy of over £1.5 billion each year. It also supports the sectors on which Scotland's economic success depends - oil and gas, financial services, bioscience, food and drink and more.

Ultimately legal services is a sector that doesn't just deliver jobs in for itself, but can support economic growth across a wide range of sectors of the economy. Whether on financial services; Scotland's thriving food and drink sector; travel and tourism; or oil, gas and renewables, solicitors help to facilitate trade globally. This includes contract negotiations for the provision of goods or services, and also advice on matters such as entry requirements and intellectual property protection. Businesses of all types are increasingly international in focus and global in reach and Scottish solicitors must be able to provide their services accordingly.

Furthermore, trade agreements create legal rights and obligations. It is therefore imperative that individuals and business have access to legal advice to allow them to exercise those rights and meet the requirements of their obligations.

There are a number of areas of work that drive overseas expansion specifically for legal services. In alphabetical order these are:

- Disputes settlement
- Energy
- Legal tech
- Project management and consultancy work

We welcome the focus on professional and business services as a growth sector and hope that legal services will be key part of the trade strategy that this government pursues.



## How we can build the right partnerships internationally through trade mechanisms to promote growth?

There are three key areas that could help develop the correct partnerships.

### Trade Deals

Our members operate across the globe in around 50 nations and territories. Whilst firms and individual members operate globally three areas are the most significant and efforts should be targeted there.

#### **EU**

Europe remains a key market for many of our large firms. Whilst many of the short-term issues arising from Brexit have been resolved it is worth noting from the start that whilst the EU-UK Trade and Cooperation Agreement (TCA) is helpful from a services perspective the deal is largely focused on trade in goods. There are however a number of helpful aspects, including a specific section on legal services not always found in a trade agreement.

There is however still a sense that fly in fly out work is overly complicating and confusing. It is hoped that some of these issues can be improved during the upcoming review of the UK-EU Trade and Cooperation Agreement. The upcoming review process presents an opportunity for the UK to raise concerns about the operation and content of the TCA. Whilst we expect the majority of the review process to focus on implementation rather than renegotiation there are areas of the Agreement that can be improved with support. For instance, article 145 commits both sides to transparency around procedures and requirements for entry and temporary stay of people. Migration is reserved to EU member state national governments which means there are often different requirements for each member state. Furthermore, the fragmentation resulting from this plethora of different requirements is in itself a barrier to trade as businesses need to understand the impact on their business in each separate jurisdiction, rather than being able to rely on a uniform understanding of the rules. A number of members and firms have expressed some concern that it is still not always clear what is and is not permissible under the current arrangements. Whilst (as we acknowledge) some of this can be put down to the relatively new nature of the TCA there is still clearly room for improving the information provided by member states about what is allowed in each country.

Secondly, article 126 commits both sides to review a number of issues including permitted activities for short term business visitors so long as it is in both sides interest. The mobility of professionals has been severely reduced as a result of withdrawal from the EU. Almost all our firms and members would welcome more flexibility for cross-border working, which has positive impacts for individuals and the economy. There is widespread agreement from our members that adding legal services to the list of permitted activities would be beneficial for Scottish solicitors and for the UK more generally. It is worth noting that whilst currently



other professions can still provide advice (such as parts of the finance sector) solicitors need both the right to enter a country (covered by the 90 day restriction which can be problematic in some cases), the right to practice and legal professional privilege. Competition and arbitration are both areas of practice which would benefit from this change. Whilst there may be other issues that cannot be solved by the TCA (insurance for instance) any steps to reduce the regulatory burden would be welcome.

### **The GCC**

The middle east and in particular UAE and Saudi Arabia are clearly a key market for many firms. In practical terms, an efficient business visa systems which allow solicitors to enter a country for the purposes of meeting their clients face-to-face is key. If a solicitor has to wait a long time for a business visa to be authorised this could act as practical barrier to provision of legal services. Evidence from our members who have worked in the GCC suggests that these are often time consuming and bureaucratic.

### **USA**

The USA is a significant though well-developed market. The maturity of the market means that it can be a challenge to operate in but is lucrative. Whilst a full UK-USA trade deal may not be appropriate or possible working with individual states and other localised promotional work would be welcome.

### **Promotional work**

Cross-border trade is essential to the legal sector. Many of the law firms operating in Scotland work and offer legal services internationally. We also have a growing number of Scottish solicitors who work in-house in other countries, offering valuable expertise and legal knowledge to the companies and organisations they serve. A consistent ask from our firms is government facilitation of network building. Developing links with other firms and the introductions to clients that come from this can come from any number of environments, but DBT/MoJ led delegations have proved useful.

Building upon these networks by establishing a commercial presence in a country can help in the long term but this is only something of interest after a firm knows there are clients in a market. Therefore short-term mobility enabling firms to network and meet clients combined with the need to follow clients around the globe is central to developing business.

It is for this reason that the Law Society have prioritised the need to secure legal professional privilege in markets where Scottish solicitors do not have it and to secure preferential fly-in-fly-out provisions where it is right to do so. On the issue of professional qualification agreements specifically we would caution against using the UK-Switzerland Recognition of Professional Qualifications Agreement as a model and prefer to create dialogues such as that in the Australia FTA as they leave control in the hands of the UK's legal regulators.



## Support for deals after they have been signed

It is important to recognise that that the impact of trade agreements on services trade is almost entirely derived from the work done after the signing of the deal so we would welcome anything that supports that work. It is vital that deals are not simply treated as 'complete' once signed. It is still very early to judge the relative success of the new deals that have been signed but if they are to be successful they will continue to need promotion and support from Government. For instance, the work of the Australia-UK Legal Services Dialogue which was established as part of the UK-Australia FTA needs a secretariate to function.



## How the UK should operate in the international context to support and protect businesses.

We believe that a whole-of-governance approach should be taken when conducting trade negotiations. This is particularly relevant where international agreements bind domestic legislatures to effect changes in domestic law. We therefore support the Scottish Parliament and Scottish Government having a role in the setting of objectives and scrutiny of trade deals. This whole of government approach should make sure that all parts of the UK are supported including the English regions and devolved nations.

Lawyers from overseas can come to Scotland to practice international law (and indeed any other aspects of law that aren't reserved to Scottish Solicitors) as they are entitled to do without registering with or requalifying as a Scottish Solicitor. We are keen to welcome those who do but we would not want to go down the path of creating a bespoke route to qualification for each nation/territory that has a small number of applicants as this would create a significant administrative burden.

It is also useful to see cooperation and coordination of promotional work done by the Scottish Government and the UK Government to avoid either overlap or omission.

Specifically within the legal sector the promotion of English and Welsh law must not become the exclusive promotion of the legal services firms of England and Wales. Scotland has a highly skilled legal services market and a number of highly competitive international firms. Many have particular specialisms in energy, financial services, and food and drink.

Whilst we recognise the desire for the UK to capitalise on the economic opportunities across the globe we would also strongly urge the UK Government to use any negotiations to promote human rights in the region.





For further information, please contact:

Dr Adam Marks  
International  
Law Society of Scotland  
[adammarks@lawscot.org.uk](mailto:adammarks@lawscot.org.uk)