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Convener
Equalities, Human Rights and Civil Justice Committee
Scottish Parliament
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10 January 2025

Dear Convener,

Regulation of Legal Services (Scotland) Bill – amendments relating to Ministerial powers

As you will be aware, the Law Society has raised serious concerns over the provisions in the Bill which would introduce a swathe of new powers for Scottish Ministers to intervene directly in the regulation of legal services.

A cornerstone of any free and fair democracy is the ability of the legal profession to act free from political control. Solicitors play a critical role, challenging government on behalf of clients and protecting citizens from the excessive use of power by the state. This is why the original proposals in the Bill were so dangerous and caused such alarm. They would have given the Scottish Government unprecedented new powers of control and interference over many of those who hold the politically powerful to account.

The proposals were met with widespread criticism, with the Scottish judiciary warning Scotland would “be viewed internationally as a country whose legal system is open to political abuse”. The International Bar Association described the proposed political interference as “disturbing” and “shocking”.

We have therefore been carefully reviewing the amendments which the Scottish Government lodged last month which we have been told are intended to respond to the concerns we and others have raised.

We realise other amendments have also been lodged for Stage 2 which deal with a range of other issues. We will write separately to you and other members of the committee regarding these amendments. However, given the particular interest and concern which has existed around Ministerial powers, we thought it may be helpful to



the committee set out our view on this issue separately from the other issues to be considered at Stage 2.

We have now completed our analysis of the amendments relating to delegated powers and wanted to confirm the proposed changes **are sufficient** to address the concerns we raised.

In particular, we welcome that:

- Section 5 giving Scottish Ministers the power to modify regulatory objectives and the professional principles is removed entirely from the Bill.
- Section 8, which includes a power for Ministers to reassign a regulator to a different regulatory category, has been changed to mean this power exists only for “new” regulators (not the Law Society). Reassignment can only be done with approval of Lord President, after extensive consultation.
- Sections 19 and 20, and Schedule 2 covering powers to take action against regulators are transferred from the Scottish Government to the Lord President. Powers to impose a financial penalty or to remove regulatory functions from the Law Society are taken out of the Bill entirely. Some Ministerial powers in relation to regulations remain but may now only be exercised with the prior approval of the Lord President and after a comprehensive consultation process.
- Section 35 which allowed Scottish Ministers to directly regulate legal services providers themselves when a regulator is ceasing to regulate, is removed from the Bill. Instead, the Lord President is given powers to seek appropriate arrangements in such a scenario.
- Section 41 and the powers to approve the new rules on law firms are transferred from the Scottish Government to the Lord President. Ministers would still be allowed to make regulations about ALB Rules, but only when requested by the Lord President, a regulator, or the SLCC Consumer Panel. The requestor must obtain prior consent from the Lord President and include reasons with their request. There are also comprehensive consultation requirements.
- Section 49 giving the Scottish Government the power to appoint itself as a direct authorisation body or regulator of legal businesses is removed entirely from the Bill.
- Paragraph 6 of Schedule 1 is amended so Ministers may only make regulations about the Client Protection Fund on request of the regulator, the Lord President or the SLCC Consumer Panel. The requestor must obtain prior consent from the Lord President and include reasons with their request. There are also comprehensive consultation requirements.



We would like to thank you and other members of the committee for your support in upholding important constitutional and democratic principles, including the clear recommendations which were contained in the committee's Stage 1 report.

If passed, the relevant amendments will be an important victory for the rule of law and the independence of the legal profession from the state.

Best Wishes

Rachel Wood
Executive Director of Regulation

cc Siobhian Brown MSP, Minister for Victims and Community Safety
Office of the Lord President of the Court of Session