

Regulation of Legal Services (Scotland) Bill

Equalities, Human Rights & Civil Justice
Committee

- Proposed amendments for Stage 2,
updated following Scottish Government
amendments

January 2025



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Introduction

As the professional body and regulator of over 13,000 Scottish solicitors, the Law Society of Scotland has long called for the modernisation of the way legal services are regulated.

This is why we welcome the Regulation of Legal Services (Scotland). We see it as an important opportunity to introduce major and long overdue regulatory changes in the public interest, for the benefit of consumers, and for those working within the sector.

The Bill marks the culmination of almost a decade of campaigning by the Law Society to secure reforms to existing legislation, much of which is now over 40 years old.

Following the decision of the Scottish Parliament to support the principles of the Bill at Stage 1, there is now an important opportunity to improve the Bill, to strengthen those areas where consumer protection could go further, and address areas where current drafting could be confusing in terms of its practical application or have unintended consequences.

We note that the Scottish Government has now lodged over 500 amendments to the Bill and have considered these carefully.

This briefing therefore updates our previously circulated paper for Stage 2, taking into account governments amendments tabled up to and including 10 January 2025. Many of these amendments helpfully address issues we have raised previously.



Ministerial powers

We had 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”.

Most of Government amendments 1-319 are, we believe, intended to respond to the concerns raised and deliver on the previous commitment from the Scottish Government to remove the powers of political intervention. We wrote to the committee convener on 10 January to confirm these amendments are sufficient to address our concerns.

As such, we are not suggesting any additional amendments on Ministerial powers for Stage 2.

Going further to improve the complaints system

There is near universal acceptance that the system for dealing with legal complaints is too slow, too rigid, too complex and increasingly expensive to operate. We have long called for an urgent overhaul, for the benefit of all who rely on there being a fair and efficient processes for handling and resolving complaints.

At Stage 1, we raised concerns that the Bill omitted many of the suggestions we put forward to the Scottish Government relating to our own part of the complaints process. We are pleased that a number of government amendments address this.

For example, Scottish Government amendments 321 and 391 give us the new powers we sought to dispose of complaints cases early when it is in the public interest to do so.

Similarly, amendment 506 gives us the ability we had requested to be able to treat evidence of criminal convictions as conclusive proof and findings in civil proceedings as evidence of the facts and matters in question. This could help us deal with certain cases more quickly.

However, there remain some unresolved issues and where we are proposing further amendments:

- **Retaining the legislative provision for frivolous, vexatious and without merit complaints (Appendix 1, page 51)**

The current Bill removes the existing eligibility test for complaints of “frivolous, vexatious and totally without merit” from the legislation. This has been an important test which has helped weed out unmeritorious complaints at an early stage. It has been used extensively by the Scottish Legal Complaints Commission since it was created in 2007 with almost 100 complaints rejected in 2023/24 alone.

We believe the removal of this early test goes against the objective of making the system simpler and ensuring genuine complaints are dealt with more quickly. Our amendment would therefore avoid this test being removed and ensure the complaints system does not become “choked off” through complaints which are not worthy of investigation.

- **Powers to issue warnings or advice to solicitors (Appendix 1, page 81)**

Even in cases where we do not uphold a conduct complaint, it could be appropriate for us to give a warning or advice to the solicitor regarding their future conduct or performance. Yet, as things stand, we have no powers to do so. Our amendment would introduce a new provision to the Solicitors (Scotland) Act 1980 to address this.



- **Improving openness and transparency in complaints cases (Appendix 1, page 84)**

Provisions in the current 2007 Act place severe restrictions on our ability to publicly disclose information relating to conduct complaints cases. As things stand, we cannot even confirm whether we are investigating a particular case, even when there are strong public interest arguments for doing so. This has caused frustration to us and stakeholders, including in some recent high-profile cases.

We believe we should have the discretion to be able to be more open and transparent and to also publish reports on conduct complaints outcomes. Our amendment inserts a new provision into the 2007 Act to give us more flexibility to provide more information publicly when it is right to do so.

We have noted Scottish Government amendment 535 which was lodged on 10 January and has sought to give us the flexibility and powers requested. We are continuing to review the specific drafting of this amendment to ensure it is sufficient. Meantime, we would ask that our own amendment is lodged by the deadline.

- **Proactively compelling the provision of information by solicitors and authorised legal businesses prior to a formal complaint being investigated (Appendix 1, page 66-69)**

At present, we can only require information from solicitors once a conduct complaint has been received. We are unable to require practitioners and authorised legal businesses to provide information to us in circumstances where we may wish to consider initiating our own complaint.

Our amendment seeks to address this, giving us powers to proactively compel solicitors and firms to provide us with information to determine if further regulatory action is necessary. Consequential amendments are made to allow us to instigate court proceedings to recover information if such a step is required.

Over the last two years, some events in the profession have led MSPs to understandably call on the Law Society to be more proactive in its approach and to try, wherever possible, to prevent problems from arising. We are keen to do this but have been constrained by the current limitations of our existing powers. This is why this amendment is so important.



Strengthening other public protections

As with our suggested amendments on the complaints system, we believe the Bill offers an opportunity to enhance our powers as a regulator to step in when there is a need to do so.

Scottish Government amendments have helpfully improved the Bill in a number of areas. For example, Scottish Government amendment 467 gives us the powers we sought to set conditions and restrictions on a legal business as part of their authorisation. Amendments 455-457 also address the loophole we identified in the Bill when it comes to who can and cannot call themselves a 'lawyer'.

However, there remain important areas where we need further amendments to protect the public:

- **significantly widening our powers to suspend a solicitor (Appendix 1, page 87)**

The Law Society currently has limited powers to suspend a solicitor from practice. This can mean a practitioner can continue to act, even when there is a clear risk to the public. This is why we are seeking additional powers to suspend a solicitor on an interim basis when possible serious wrongdoing is uncovered or alleged, or to restrict a solicitor's practising certificate to afford greater public protection. We believe these additional powers are important to provide us with flexibility to step in and protect the public when it is right to do so.

We realise that Scottish Government's amendment 503 has sought to provide this. However, it also brings unnecessary and time-consuming processes which could put consumers at risk. Our amendment is much simpler and provides a new section to the 1980 Act to give us this broad power to suspend when it is right to do so. It also allows us to act more swiftly to protect the public than the Scottish Government amendment would do. This ability to suspend should also apply to alternative business structures.

- **Safeguarding of clients' interests when intervening in firms (Appendix 1, page 92)**

Where an authorised legal business is unable to continue to operate in certain circumstances (e.g. where authorisation has been removed, or through the death, incapacity, suspension or disqualification of a sole practitioner) it is essential that we have powers to step in and protect interests and assets of the clients swiftly.

This has been the case historically, where the Law Society has been able to intervene in a firm to protect clients' interests. This can include completing certain legal work, such as property transactions, to ensure clients are not disrupted or do not lose out financially.



Our amendment ensures we can continue to have these crucial powers under the Bill, ensuring client money is protected immediately by being placed under the control of the regulator. The regulator would be able to issue directions setting out how other client assets (files and documents which belong to the client, for example) are to be dealt with. This will help us ensure we can respond quickly and effectively to protect the interests of clients in all the different circumstances which may apply in a firm. This should also apply to alternative business structures under the 2010 Act.

We recognise that Scottish Government amendments have made an attempt to provide us with these powers. However, they involve complicated and time-consuming processes, including applications to the court. This would bring in new and unnecessary delays to us being able to step in quickly when it is important to do so, in order to ensure clients are not disadvantaged.

As things stand, the Scottish Government amendments on this point would leave consumers in a worse position than they are in today. This is why our own amendment is so important.

- **Moving the register of unregulated legal services providers from a voluntary scheme to a mandatory scheme (Appendix 1, page 76)**

We have long raised concerns over the exposure of clients who use unregulated providers of legal services. When issues arise, these clients have no recourse to the SLCC or through the work of the Law Society.

The Bill as drafted allows the Commission to introduce a register for unregulated providers. The Scottish Government's amendment 372 helpfully strengthens this section, making it an obligation on the SLCC to establish this register, rather than simply an option. However, the register itself would remain voluntary for unregulated businesses with no obligation to sign up. It remains unclear to us why an unregulated provider, which has chosen to operate outside of the structures regulated by the Law Society, would choose to join the register.

Our amendment proposes that this register be mandatory for unregulated providers of legal services, and not discretionary. This responds to the EHRCJ Committee Stage 1 report, which asked the Scottish Government to consider making the register mandatory to provide better consumer protection.

- **Definition of legal business (Appendix 1, page 40)**

The Bill defines a legal business as being wholly owned by either solicitors OR qualifying individuals, but not a mixture. It also makes no provision for any share of ownership being held by any Registered Foreign Lawyer (RFLs), as currently allowed for by the Solicitors (Scotland) Act 1980, in multi-national



practices. Finally, it makes no provision for business structures which include another corporate body.

The Scottish Government amendment 273 goes some way to providing the changes we need but do not go far enough and leave a significant element of legal uncertainty around the position of Registered Foreign Lawyers.

Our amendments ensure multi-national practices, of which many operate in Scotland including some of the largest firms, can be authorised legal businesses and continue to be regulated by the Society as they are now. This amendment is essential to ensuring many of the largest law firms in Scotland can continue to operate.

- **Ensuring firms can act in their clients' interests (Appendix 1, page 34 and 43)**

At Stage 1, we raised our concerns over Sections 21-24 of the Bill which provide regulators with the powers to 'waive' the application of practice rules in defined circumstances. Our current processes for granting waivers from practice rules have worked well for many years and is overseen by a dedicated committee involving lay members and experienced solicitors. No concerns have been raised with us previously on how waivers are granted.

There are sometimes good reasons to agree to waive an individual solicitor from a practice rule in a specific case when it benefits their client(s).

However, as currently drafted, the provisions are unworkable for dealing with waivers quickly, creating new processes involving the Competition and Markets Authority, the office of the Lord President and Scottish Ministers. These processes could stymie the existing effective and efficient waiver system, cost more and be of real detriment to consumers. In addition, no provisions are made in the Bill for the waiver of rules affecting an authorised legal business at an entity level. Our amendments to sections 21-24 and section 41 seek to address these issues.



The role, powers and oversight of the Scottish Legal Complaints Commission

In our call for evidence response and Stage 1 briefing, we raised several issues relating to the role, powers and oversight of the Scottish Legal Complaints Commission.

- **Power of the SLCC to set minimum standards (Appendix 1, page 82)**

We had raised concerns over those provisions in the Bill which would grant the SLCC, for the first time, the ability to set and enforce minimum standards for the legal profession directly.

These are broad powers which would, in effect, give the Commission the power to make practice rules for the profession by a back door without any checks and balances such as a requirement to consult or the requirement for scrutiny and approval from the Lord President.

We recognise that Scottish Government amendments 395 – 411 have sought to deal with our concerns by reshaping the process by which the SLCC would instead have the power to direct regulators to impose standards.

While we agree this represents a better process, we believe an additional safeguard is needed for cases where the SLCC makes a direction that is simply wrong or unworkable.

We therefore propose an additional amendment which builds in a simple mechanism for a regulator to appeal an SLCC direction to the Lord President at an early stage of the process.

- **The Scottish Legal Complaints Commission budget (Appendix 1, page 72)**

The Commission is and will continue to be funded by the legal profession through an annual levy applied on individual solicitors. While the Commission is legally required to consult on its budget, there is no mechanism by which formal objections can be raised. It means the Commission could double, even treble its annual levy, and there is no recourse available to those who fund it. It contrasts with the Law Society where an affirmative vote is required at an annual general meeting each year to approve the annual practising certificate fee.

Our amendment would give regulators and Scottish Ministers the right to object to the Lord President in respect of the Commission's proposed budget. Where an objection is received the Lord President may direct the Commission in respect of its budget.



Other provisions

Other suggested amendments are provided within appendix 1 and address other issues. All include effects and reasons.

These include amendments relating to:

- The make-up and operation of our Regulatory Committee
- Avoiding any duplication of the regulation of solicitors
- Minor, but essential, technical corrections to the Bill

Separate to this, it is our understanding that the Scottish Government intends to bring forward additional amendments at Stage 3 which relate to 2010 Act and the parts of the Bill relating to alternative business structures. We expect these will impact on the amendments we ourselves have previously suggested on these areas of the Bill. For completeness, we have included this package of amendments in appendix 2 but recognise these are matters which will likely need to be considered at Stage 3.

For further information, please contact:

Kevin Lang
Executive Director of External Relations
Law Society of Scotland
kevinlang@lawscot.org.uk