

Supplementary submission to the House of Lords Constitution Committee

Rule of Law Inquiry

August 2025



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Introduction

In our submission to the House of Lords Constitution Committee Inquiry on the Rule of Law: [committees.parliament.uk/written evidence/140770/pdf/](https://committees.parliament.uk/written-evidence/140770/pdf/) we raised the risk to the rule of law which occurred when the Scottish Government introduced into the Scottish Parliament on 20 April 2023 the [Regulation of Legal Services \(Scotland\) Bill | Scottish Parliament Website](#). The lead Committee assigned to the Bill was the Equalities, Human Rights and Civil Justice committee (EHRCJC).

We welcomed many aspects of the Bill. It was an important opportunity to introduce major and long overdue regulatory changes in the public interest, for the benefit of consumers, and those working within the legal profession.

However, we were very concerned to see sections in the Bill which would have given the Scottish Government extensive and exceptional new powers of intervention over how solicitors and advocates are regulated. A key component of a free and democratic society is the role that an independent legal profession plays in challenging government and protecting citizens from the excessive use of power by the state: [Basic Principles on the Role of Lawyers | OHCHR](#). The proposed ministerial powers in the Bill risked seriously undermining the rule of the law and the independence of Scotland's legal sector from the state.

The Rule of Law issues raised by the Bill

Part 1 of the Bill dealt with the overarching regulatory framework. It had three Chapters which:

- a. set out what regulated legal services are to achieve and the standards that those providing services should follow,
- b. made rules for all regulators of legal services. It divides regulators into two categories and places different rules on each; and
- c. set out how an organisation can become a regulator, and its members can gain permission to provide legal services.

Sections 19 and 20 of the Bill as introduced would have created sweeping levels of ministerial intervention into the regulation of the legal profession.

Section 19 – Review of regulatory performance by the Scottish Ministers

This section provided that the Scottish Ministers could review the performance of the Law Society or the Faculty of Advocates if requested to do so by the Scottish Parliament, the Competition and Markets Authority or Consumer Scotland. A request may be made only where the requesting body is concerned that the regulator is failing to exercise its regulatory functions in a manner that is

compatible with the regulatory objectives or in the public interest. When a review is being carried out it was to be done with a focus on, but not limited to, the regulator's compliance with the regulatory objectives and professional principles, the exercise of its regulatory functions, the operation of its regulatory committee (where relevant) or other internal governance arrangements and its compliance with any measures applied to it under section 20 of the Bill or any direction from the Commission under the Legal Profession and Legal Aid (Scotland) Act 2007. Following any such review, the Scottish Ministers would have been required to prepare and publish a report detailing the findings and any measures they intended to take under section 20. But they could delegate the review to someone else.

Section 20 – Measures open to the Scottish Ministers

This section originally allowed the Scottish Ministers to take specified measures in relation to the Law Society or the Faculty of Advocates if they considered that to be appropriate. The measures were — contained in section 20 (4) (a) setting performance targets, (b) directing that action be taken, (c) publishing a statement of censure, (d) imposing a financial penalty, (e) making changes to, or removing some or all, the regulatory functions exercised by the regulator. Under section 20(5) the Lord President's agreement was required for the taking of the measures mentioned in subsection (4)(a), (b), (c) or (e).

Under section 20(6) the Scottish Ministers could have made regulations which specified other measures that may be taken by them and make further provision about the measures that they may take. This could have involved a completely new form of sanction or action or adjusting an existing measure, perhaps the adding or removing of procedural requirements.

Sections 19 and 20 of the Bill would have allowed the Scottish Government unprecedented levels of political control and interference over many of those who work to hold the Scottish Government to account. Those powers would have permitted the Scottish Government to intervene directly in the rules that determine who can and cannot be a solicitor, decide the professional requirements placed upon solicitors, and dictate the way in which legal firms operate.

During the Bill's passage we repeatedly asked the Scottish Government to provide a justification for seeking such powers. We asked specifically for instances where the Scottish Government had identified a regulatory failure that would have resulted in it using the proposed new powers. In response, the Scottish Government said our questions were 'hypothetical' and that the provisions are merely intended to act as a safeguard. These were not satisfactory answers. The EHRCJC specifically asked about Sections 19 and 20 but other sections also caused concern.

Section 41 Rules for authorised legal businesses

This section gave Scottish Ministers, for the first time, a direct role in approving rules on the way existing law firms operate and the conduct and practice of solicitors. This was political intervention in the regulation of Scottish solicitors and contrasted sharply with the existing and long-standing practice whereby it is for the Lord President to approve solicitor practice rules.

Section 49 Powers of the Scottish Ministers to intervene

This section originally would have allowed the Scottish Government to make regulations appointing itself as a direct authorisation body or regulator of legal businesses. It raised the novel prospect that the state could regulate law firms directly. We believed it was dangerous and wrong to undermine the independence of the legal profession in this way. Not only would it weaken the Scottish legal sector in what is an increasingly internationally competitive market, it will also damage the global reputation of Scotland and its justice sector.

Given the serious issues raised, we believed that Sections 19 and 20, elements of Sections 41 and 49, and Schedule 2 should be removed from the Bill.

The Reaction to the problematic sections in the Bill

No such attempt at political control over the solicitor profession (or any other legal profession) in Scotland has taken place before. Our view is that the independence of the legal profession from the state is a fundamental tenet of the rule of law. This matters because of the critical and unique role which solicitors play in our society, challenging government on behalf of clients and protecting citizens from the excessive use of power by the state.

The International Bar Association (IBA) in its submission to the EHRCJC stated:

A truly independent legal profession can assist society in its efforts to protect and enforce its citizens' rights against political institutions or intrusions of private parties. The duty of a lawyer, and the legal profession as a whole is to uphold and defend the rule of law and, in so doing, serve the wider interests of society. The independence of the legal profession enables lawyers to fulfil this function without fear of abusive prosecution, and free from improper influence of any kind.

It was: "...disturbing to see the Scottish Government now attempting to secure, through the Bill, powers of control over the Scottish legal profession. If enacted, Sections 19, 20, 41 and 49 of the Bill would grant Scottish Ministers extensive new powers over the currently independent regulators of legal professionals, and over law firms directly. It is even more shocking to see the Scottish Government seeking the power to appoint itself as a regulator of the legal sector.

By any measure, these sections of the Bill represent an alarming and dangerous assault by the Scottish Government on the independence of the legal profession. At a stroke, it risks undermining the rule of law in Scotland and harming the international reputation of Scotland and its legal sector.”: [Response 377687700 to Regulation of Legal Services \(Scotland\) Bill - your views - Scottish Parliament - Citizen Space](#)

The Scottish Judiciary stated in their submission on the Bill:

“ These proposals are a threat to the independence of the legal profession and the judiciary. It is of critical constitutional importance that there is a legal profession which is willing and able to stand up for the citizen against the government of the day. The judiciary is fundamentally opposed to this attempt to bring the legal profession under political control. If the Bill is passed in its current form, Scotland will be viewed internationally as a country whose legal system is open to political abuse.”: [Response 319392044 to Regulation of Legal Services \(Scotland\) Bill - your views - Scottish Parliament - Citizen Space](#)

These concerns explain why the Bill caused such deep concern not only within the IBA but also with the Commonwealth Lawyers’ Association, which recently launched an international declaration on the independence of legal professions [Declaration on preserving and strengthening the independence of the Judiciary and on ensuring the independence of the legal profession - News - CLA](#).

In addition, in what is now a global marketplace for legal services, such provisions would have made Scotland a less attractive legal jurisdiction in which to do business, both for multi-national law firms and for clients looking to invest in Scotland. Clients often have a choice of which law, which jurisdiction and which dispute forum to choose when doing business in the UK. The risk of direct state intervention and even the perception of political control over the Scottish legal profession could have seen clients choosing to go elsewhere. It may also have resulted in the larger multinational firms moving their operations to other jurisdictions in the UK. Furthermore, there was a risk that autocratic regimes in other parts of the world could have used Scotland as an excuse to justify similar controls on the lawyers in their own countries.

The EHRCJC acknowledged the concerns in its Stage 1 Report which stated, at paragraph 254: *“ Various sections of the Bill give powers to the Scottish Ministers. The Committee heard significant opposition from the Law Society, Faculty of Advocates and the Senators of the College of Justice among others in relation to these proposals that these powers are inappropriate and have potential for political interference and bias. The Committee shares these concerns. It is of the view that there is no place for Ministerial powers in the Bill and these should be removed.”: [Stage 1 Report on the Regulation of Legal Services \(Scotland\) Bill](#).*

The Scottish Government's reaction to these concerns

These expressions of concern led to the Scottish Government agreeing to change the Bill. Siobhan Brown MSP, the Scottish Minister for Community Safety and Victims stated in a letter to Kaukab Stuart MSP, the Convener of the EHRCJC dated 27 October 2023: *Therefore, reflecting carefully on the discussions we have had with stakeholders including the senior judiciary, it is my intention to bring forward amendments at Stage 2 intended to address concerns raised in respect of the role placed on Scottish Ministers within the Bill:* [Minister for Victims and Community Safety](#).

Amending the Bill

Stage 2 in Scottish Parliamentary procedure is the amending stage. There were two amending sessions of the EHRCJC on 21 and 28 January 2025 at which more than 640 amendments for the most part tabled by the Scottish Government, were considered.

The Minister Siobhan Brown, in advancing a considerable number of amendments to the Bill stated: "I turn to amendments 2 and 43. The Law Society of Scotland, the Faculty of Advocates and the senior judiciary raised concerns at stage 1 about the provision in the Bill that conferred powers on the Scottish ministers. The Scottish Government absolutely recognises the importance of an independent legal profession and is committed to upholding that independence. The intention has been that the Bill would protect the independence of the legal profession while introducing greater transparency and accountability with regard to the profession's duty to work in the public interest.

"I wrote to the committee in September 2023 to say that I would lodge amendments to remove the references to the Scottish ministers that caused concern, and I confirmed that again in my response to the stage 1 report. Amendments 2 and 43 are the first of a number of amendments that remove that provision, and the committee has been provided with a list that highlights those amendments. As this is the same change throughout the whole Bill, I will not repeat the reasoning in each group. Amendment 43 will remove section 5 of the Bill, which would have conferred a delegated power on the Scottish ministers to amend the objectives of legal services regulation and the professional principles to which persons providing legal services should adhere. Amendment 2 is consequential to that change. Amendment 3 makes a change to section 1, removing the reference to the ministerial powers in sections 19 and 20. It is consequential on amendments to those sections that have the effect of transferring the powers under those sections from the Scottish ministers to the Lord President.": [Official Report](#)

Accordingly, in effect references to the Scottish Ministers having powers over the legal professions under the Bill were deleted and those powers were transferred to the Lord President. The Lord President wrote to the EHRCJC on 23 December 2024 that: “ Significant progress has been made to protect the rule of law. The Scottish Government has removed the role of the Scottish Ministers in the regulation of the legal profession (sections 8, 19, 20, 25-35, 41, 86, schedule 1 paragraph 6 and schedule 2) and removed sections 5 and 49. Our significant constitutional concerns have been addressed.” [Letter from the Lord President to the Convener, 23 December 2024](#)

The Law Society also wrote to the EHRCJC on 10 January 2025 stating: “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.”: [Letter from the Law Society of Scotland, 10 January 2025](#)

Stage 3 – Final proceedings on the bill

The final stage for consideration of the Bill is termed Stage 3 and took place at a plenary meeting of the Parliament on 20 May 2025: [Official Report](#). Stage 3 provides a final opportunity to make amendments to the bill. More than 140 amendments were tabled for consideration, mostly by the Scottish Government. The Parliament agreed to the Bill passing. The result of the division was For 88, Against 26, Abstentions 0.

Conclusion

The constitutional problem with the Bill as introduced was considerable. In making provision for the Scottish Ministers to have regulatory powers over the solicitor profession the Bill posed a direct threat to the rule of law. The Scottish Government should not have undertaken legislation framed in such a way. Under the [Legal Services \(Scotland\) Act 2010](#) Scottish Ministers must, so far as practicable, act in a way which (a) is compatible with supporting the constitutional principle of the rule of law (sections 1 and 4). Not only are there statutory provisions on this point but in the case of *AXA General Insurance Limited and others (Appellants) v The Lord Advocate and others (Respondents)* [2011] UKSC 46 [Microsoft Word - AXA final.doc](#), the UK Supreme Court found that in principle Acts of the Scottish Parliament are subject to judicial review but not on the grounds of irrationality, unreasonableness or arbitrariness. The guiding principle is to be found in the rule of law. This is the ultimate controlling factor, and the courts must insist that it is respected by legislation that the Parliament enacts.

To seek to enact legislation which may undermine the rule of law is something which no Government in any part of the United Kingdom should do.



For further information, please contact:

Michael P Clancy, OBE,WS,FRSE
Director, Law Reform
Law Society of Scotland
michaelclancy@lawscot.org.uk