



# Legal services regulation reform in Scotland - Scottish Government consultation

## What is it and why does it matter?

### What is the government’s consultation about?

The consultation asks for views on reforming the regulation of legal services in Scotland. One option would see the creation of a new single regulator and would end the Law Society’s 70-year role in regulating solicitors. The consultation runs until 24 December 2021.

### Why is the consultation happening?

In 2017, the Scottish Government established an independent review of legal services regulation. This followed repeated calls from the Law Society to reform the legislation covering the regulation of solicitors, most of which is now over 40 years old. The review was undertaken by Esther Robertson who recommended creating a new body for regulating all legal professionals. Ministers promised to consult on this and other options before deciding on a way forward.

The second option keeps the bulk of regulation with the Law Society and instead introduces a new ‘market regulator’. This would oversee the Law Society and other bodies like the Faculty of Advocates. This model broadly replicates the Legal Services Board which works in the much larger England and Wales jurisdiction.

The third option keeps existing regulatory structures but would still allow for major reform of regulation processes and improve the system for the public and the profession.

### What does the consultation cover?

The consultation presents three options. The first would follow the Robertson recommendation to create a new body covering all aspects of regulation including:

- setting education standards.
- issuing practising certificates.
- handling all conducts complaints and prosecuting for discipline.
- financial inspections and anti-money laundering supervision.
- operating the Law Society Client Protection Fund.

The new body would be funded entirely by the legal profession and would completely end the Law Society’s role in solicitor regulation.

### What was the reason for recommending change?

It is unclear why Esther Robertson proposed creating a completely new regulatory body in 2018. In her report, she said; “Scotland is home to a well-educated, well respected legal profession with a high degree of public trust.” She went on to say; “there is little evidence of significant wrong doing in the current model.”

There is no question that change to regulation is needed, particularly within the complaints system, which is slow, complicated, cumbersome and expensive to operate. However, we think those issues can be addressed without the structural upheaval, cost and uncertainty of creating a new body.



93% of the Scottish solicitor profession believe the Law Society should be responsible for regulation.



81% of people in Scotland have trust in the solicitor profession. Higher than similar research showing only



48% trust in England and Wales.





### What is the Law Society's view on the consultation?

We agree that reform is needed and are pleased the government is consulting. The original government review came about, not because of a scandal or market failure, but because the Law Society went to government and asked for changes to the outdated 40-year-old legislation for regulating solicitors. However, we disagree fundamentally with the idea of removing all regulatory powers from the Law Society and giving them to a new politically appointed body. It could reduce professional standards and significantly increase costs. It also raises rule-of-law questions around the independence of the legal profession from the state. Similarly, the new market regulator model risks layering in more unnecessary bureaucracy and cost into our small legal jurisdiction. There are other proposals in the consultation which we do support, such as a stronger system of entity regulation and restrictions around who can and cannot call themselves a 'lawyer'.

### What are the problems with creating a new regulator?

- Increased costs – creating new bodies, whether a completely new regulator or an additional market regulator, will involve significant start up and running costs. You only have to look at the experience of the Scottish Legal Complaints Commission (SLCC), where costs have increased by almost 50% since it was established, despite the same numbers of complaints as 10 years ago. Additional costs risk increasing the price of legal services and could damage the competitiveness of the Scottish profession just as it recovers from the COVID economic decline.
- Lower standards – in England and Wales, where the regulator

is separate from the Law Society, reforms diluted regulatory requirements and risked reducing standards. A new inexperienced regulator in Scotland could take a similar approach.

- Independence – a key principle of the rule of law is the independence of the legal profession from the state. Having government or other political appointees running legal regulation seriously undermines that principle. A similar model in Ireland was rejected after concerns around the rule of law and independence of the profession.

### What is the Law Society proposing?

We are passionate about protecting consumers and ensuring the Scottish legal profession can thrive. We have a range of reforms ideas, including a focus on fixing the broken complaints system. Our proposals would transform the SLCC into a Scottish Legal Ombudsman Service which could concentrate properly on dealing with consumer complaints thoroughly but swiftly. That ombudsman could give much needed focus to consumer redress and issues of compensation. This would allow the Law Society to continue its strong track record of addressing issues of professional misconduct and protecting the public interest. This kind of system was recently adopted in Northern Ireland.

### What can you do?

It is important that everyone makes their views known. The consultation runs until 24 December 2021 and you can answer as many or as few questions as you want. You can get more detailed information at [www.lawscot.org.uk/legalservicesreform](http://www.lawscot.org.uk/legalservicesreform)

### The Robertson risks



increased costs



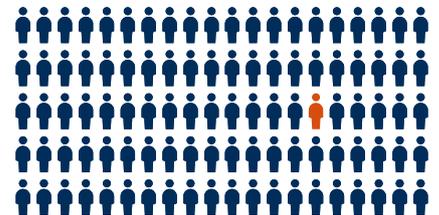
lower standards



rule of law



SLCC costs have risen by **50%** despite the same number of complaints



Fewer than **600** eligible complaints last year out of millions of client matters

### The single professional body model

doesn't just work for solicitors, it works for:



Teachers



Accountants



Surveyors