



# Regulation of Legal Services (Scotland) Bill

## Scottish Parliament Stage 1 Debate Briefing

### What is the new legislation about?

The Law Society of Scotland welcomes the Regulation of Legal Services (Scotland) Bill. It is 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 sector. It marks the culmination of eight years of campaigning by the Law Society to secure reforms to existing legislation, much of which is now over 40 years old.

### Key issues for Stage 1

#### New Ministerial powers

The Bill currently introduces new powers for Scottish Ministers to intervene directly in the regulation of legal services. These provisions have caused widespread concern, from the International Bar Association to Scotland’s most senior judiciary.

A fundamental tenet of the rule of law is the independence of the legal profession from the state. Solicitors play a unique role, challenging government on behalf of clients and protecting citizens from the excessive use of power by the state.

We strongly welcome the conclusion of the Equalities, Human Rights and Civil Justice Committee which said, “there is no place for Ministerial powers in the Bill and these should be removed.”

We also welcome the constructive approach of the Minister, who has promised significant amendments at Stage 2. We have yet to see the specific drafting but the direction of travel is encouraging and we remain committed to finding a consensus on these matters.

#### Improving the complaints system

There is near universal acceptance that the system for dealing with legal complaints is too slow, too rigid and too complex. There is a need for an urgent overhaul, for the benefit of all who rely on

there being a fair and efficient processes for handling and resolving complaints. There are many provisions in the Bill which we welcome and have come about because of years of positive work between the Law Society, the Scottish Legal Complaints Commission (SLCC) and the Scottish Government. However, we think the Bill can and should go further, and we have many suggestions for improvements at Stage 2 including; early disposal powers, stronger powers of suspension, and greater flexibility to allow us to be more transparent on our handling of complaints.

#### Strengthening public protections

The Bill has a number of reforms to protect the public. It is imperative these improvements, many of which having been in discussion for 10 years, are delivered. These include:

- **New provisions for regulating legal businesses**  
Expanding regulation beyond the individual within a firm to cover all employees collectively.
- **Regulating who can call themselves a “lawyer”**  
This responds to our long-standing call for change given anyone, including those without any legal education, qualification or accreditation, can legitimately call

### The Bill currently introduces



new regulation over legal businesses



changes to complaints handling



restrictions over who can call themselves a lawyer



**new powers for Scottish Ministers to intervene in the regulation of solicitors**

### Proposed Ministerial powers to:



#### Section 19 & 20

Direct the Law Society to take certain actions. Censure, fine us, or remove our regulatory functions



#### Section 41

Approve rules on the way law firms operate, and the conduct of solicitors



#### Section 49

Appoint itself as a direct authorisation body or regulator of legal businesses

The Scottish Government has committed to amendments at Stage 2



themselves a ‘lawyer’ and offer legal services for profit on this basis.

### • The Law Society Regulatory Committee

Where the Bill helps strengthen our committee’s independence, to help it be more transparent in its decisions, and to create a new annual report to Scottish Parliament.

### Issues still to be addressed at Stage 2

There remain areas of concern for us which we hope can be addressed at Stage 2. These include:

#### Going further in the public interest

We have shared with the Scottish Government our ideas for making public protections in the Bill even stronger. These include:

- a) new powers allowing us to dispose of conduct cases early (similar powers exist in England and Wales),
- b) powers to issue letters of advice and warning,
- c) wider powers to suspend a solicitor,
- d) ability to adopt civil and criminal findings as fact so that these do not need to be relitigated at the discipline tribunal,
- e) ability to award mandatory training orders for solicitors,
- f) increasing the transparency of our complaints system by relaxing the terms of the 17 year old legislation which prevents us from being able to confirm whether we are considering regulatory action in specific cases.

#### Freedom of Information

Many parts of the Bill increase transparency. However, we disagree with making the work of legal regulators subject to Freedom of Information (FOI). No other UK legal regulator involved in making disciplinary and regulatory decisions is currently subject to FOI, not least because decisions are so often

subject to GDPR.

#### Addressing possible loopholes in the regulation of using “lawyer”

The new restriction is potentially weaker because an offence would only be committed if a person uses the title of lawyer “with intent to deceive”. This subjective term risks creating an unhelpful loophole. We believe this should be amended to a term of acting “wilfully and falsely” as a lawyer. This would bring consistency with offence of pretending to be a solicitor.

#### Name of the ‘Scottish Legal Services Commission’

We have concerns over the renaming of the SLCC to the Scottish Legal Services Commission and possible confusion amongst those who may think the Commission is some provider of legal services.

#### Powers of the Scottish Legal Services Commission to direct regulators

The Bill would give the Commission new powers which go well beyond its current powers to issue recommendations. Such powers would represent a major departure from the current arrangement where the SLCC has the power to make recommendations but where it is for the Law Society, with the relevant understanding and experience of regulation, to take final regulatory decisions.

#### Powers of the Scottish Legal Services Commission to impose required standards on the legal profession

The Bill would allow the Commission to set minimum standards for both the regulator and the legal profession. These are potentially very broad powers which would, in effect, give the Commission the power to make practice rules by a back door without any checks and balances such as scrutiny and approval from the Lord President.

#### We will voice our concerns about:

- the renaming of the SLCC
- their potential new powers to direct regulators and impose standards on the profession.



#### Public interest



Our ideas for strengthening public protection include wider powers to suspend a solicitor, the ability to award mandatory training orders, and increasing transparency of our complaints system.

#### The Bill’s progress so far

- 1 **20 April 2023**  
Bill introduced
- 2 **23 November 2023**  
Delegated Powers and Law Reform Committee report
- 3 **8 February 2024**  
Equalities, Human Rights and Civil Justice Committee report
- 4 **22 February 2024**  
Scottish Parliament Stage 1 debate

#### Get in touch

We are keen to engage with MSPs from across the political parties before and after the Stage 1 Debate. If you have any questions or would like to discuss our ideas to improve the Bill please get in touch with us:

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