



THE LAW SOCIETY  
of SCOTLAND

[www.lawscot.org.uk](http://www.lawscot.org.uk)

# Our Priorities for the UK General Election 2015

# Foreword

For over 60 years, the Law Society of Scotland has acted as the professional body for Scottish solicitors and the key guardian of the public interest in relation to the solicitor profession and the wider justice system. Our interaction with over 11,000 members as well as the wider public has given us a unique perspective, not just on legal matters but on many of the wider issues facing Scotland. The Scottish independence referendum attracted a record level of political engagement and a quite astonishing turnout at the polls. Going into the UK general election it is vital that the political parties harness that interest and enthusiasm and continue to engage the electorate.

A general election is an important event. Occurring only every five years, it allows for a national debate on a wide range of issues. Many areas, including most elements of justice, legal aid and court reform, are devolved to the Scottish Parliament, and we will return to these key issues when we publish our priorities ahead of the 2016 Holyrood election.

The state of the UK economy along with policies around total government spending still generate discussion here in Scotland about priorities and the funding of our public services.

A general election also allows businesses, trade unions, charities, campaign groups and think tanks to propose their own ideas and challenge the political parties. We want to be part of that debate too. That is why we are setting out four key areas on which we believe the next UK Government and MPs elected to the House of Commons need to act. These are: the preservation and protection of human rights; the further devolution of powers to the Scottish Parliament; the question of an EU referendum; and the provision of legal

services as a key component of a growing economy. Our thoughts on each of these areas are laid out in more detail in this document.

All of these areas will have profound implications during the lifetime of the next UK Parliament, not only for the legal sector but for the wider public.

As we argued in the build-up to the independence referendum, substantive changes to our constitution and laws should be subject to proper scrutiny and vigorous debate. We believe it is vital that human rights are available to all, that commitments on the delivery of constitutional reform are laid out by all major parties, and that our future membership of Europe is subject to a mature and rational debate.

We hope that the political parties and indeed the next UK Government will choose to prioritise these key areas and, more importantly, we hope that this document will help spark debate and maintain the level of political engagement across the UK that we have seen in Scotland over the last year.



Best wishes,

A handwritten signature in black ink that reads "Alistair L. Morris". The signature is written in a cursive style with a large initial 'A'.

**Alistair Morris**  
President of the Law Society of Scotland

## About the Law Society of Scotland

We were established in 1949 to represent the interests of the solicitors' profession in Scotland and the interests of the public with respect to that profession. This gives us an important and prominent role in civic Scotland and, in the words of the European Parliament, to be one of the pillars of pluralism and independence in society.

As the professional body for over 11,000 solicitors who collectively engage with millions of people and across a wide spectrum of issues, we are able to access a broad base of experience and expertise.

Our Council and committees are made up, not just of legal practitioners but also academics and other experts from outside the legal profession.

As the statutory regulator of the legal profession, we work to ensure the highest possible standards. We also have a duty of care to the public to ensure they have an awareness of their rights and how they can access the Scottish justice system. For these reasons, we have a particular interest in good governance and the creation of good law. We respond to public consultations and recommend detailed amendments to political representatives during the legislative process.

We are a strictly non-partisan organisation and enjoy a regular programme of engagement with MPs and MSPs from across the political divide. At all times, we seek to ensure political decision-makers understand the impact of the decisions they take, intended or otherwise.

## What we are saying

There are four major areas where we believe the next UK Government should consider and take action on. We are calling for the political parties to consider the following in their manifestos:

1

The protection of human rights and the European Convention on Human Rights

2

A stable devolution settlement for Scotland

3

The provision of long-term clarity on the UK's membership of the European Union

4

The retention of legal services at the heart of a growing economy

# 1

## The protection of human rights and the European Convention on Human Rights

### Where we are now

The European Convention on Human Rights (ECHR) was brought into force in 1953 and is now the most developed international human rights regime in the world. We believe the rule of law has been enhanced as a result of ECHR and its incorporation into UK law through the Human Rights Act 1998. The rule of law is a cornerstone of the United Kingdom's constitution and to any democratic state.

There has been increasing debate about ECHR and the desirability and legality of replacing the Human Rights Act with a Bill of Rights and giving the UK the final decision in human rights cases.

As an organisation which is passionate about the rule of law and human rights, we believe the Human Rights Act is an essential component of our society and in the protection of our liberties and freedoms. We believe it is important to generate a greater understanding, awareness and appreciation for the Human Rights Act and the role of ECHR amongst the general public. Our political leaders and others who support ECHR must make this a priority over the coming months.

More importantly, we believe the repeal of the Human Rights Act or withdrawal from ECHR could have a detrimental impact on the ability of individuals to hold the state to account, which in turn would undermine the rule of law. In the spirit of greater respect and cooperation between the UK and Scottish governments, no measures should be taken at a UK level which impact on the legal framework of human rights here in Scotland without the explicit consent of the Scottish Parliament.





#### **We believe that:**

- Human rights are for everyone. The European Court of Human Rights has issued historic landmark rulings, many of which are now taken for granted, including: protecting against the criminalisation of homosexual acts in private; establishing the right to object to corporal punishment in school; and, protecting the freedom of the press from restrictive contempt of court laws. All anti-terrorism laws should acknowledge the need to balance protection of society at large with the obligation to uphold the human rights of the individual.

- ECHR has significantly impacted upon the Scottish legal landscape since its incorporation. Significant rulings relate to stopping out in prisons, the right of detained suspects to legal representation either prior to or during a police interview and finding that standard bail conditions allowing any print, impression or sample to be taken were "not law".
- Withdrawing from ECHR and repealing the Human Rights Act could risk the UK's standing in the international community and its reputation worldwide as a champion of rights and freedoms. It would leave the UK alone with Belarus as the only European states not signatories to ECHR and leave it with little standing to encourage reform in other states where there have been allegations of human rights abuses.

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#### **We would urge the political parties to make manifesto commitments which reflect a commitment to:**

1. Protecting human rights and upholding the rule of law.
  2. Retaining the Human Rights Act 1998.
  3. Remaining within the jurisdiction of ECHR.
  4. Avoiding taking measures to alter the existing human rights legal framework in Scotland without the consent of the Scottish Parliament.
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# 2

## A stable devolution settlement for Scotland

### Where we are now

Following the result in the Scottish independence referendum in September 2014 and the majority decision of the Scottish people to remain part of the United Kingdom, the Prime Minister nominated Lord Smith of Kelvin to oversee a process to develop a consensus between the political parties for an enhanced package of devolution to the Scottish Parliament.

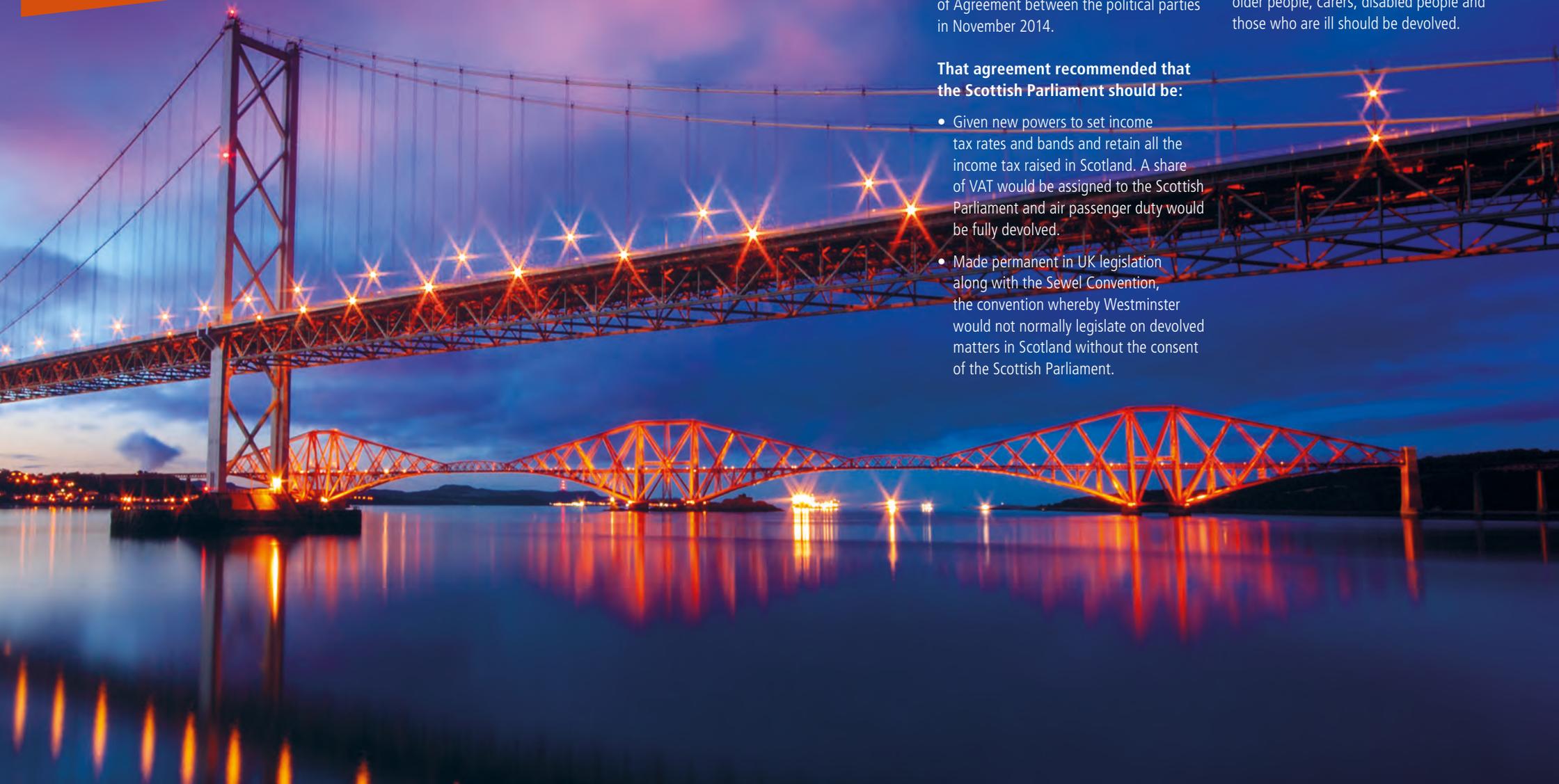
The Smith Commission published its Heads of Agreement between the political parties in November 2014.

### That agreement recommended that the Scottish Parliament should be:

- Given new powers to set income tax rates and bands and retain all the income tax raised in Scotland. A share of VAT would be assigned to the Scottish Parliament and air passenger duty would be fully devolved.
- Made permanent in UK legislation along with the Sewel Convention, the convention whereby Westminster would not normally legislate on devolved matters in Scotland without the consent of the Scottish Parliament.

- Given new powers over how it is elected and run including the power to allow 16 and 17 year olds to vote in Holyrood and local government elections.
- Given powers to create new benefits in devolved areas and make discretionary payments in any area of welfare and additional tribunal powers, including employment tribunals.

The Smith Commission also recommended that a range of other benefits that support older people, carers, disabled people and those who are ill should be devolved.



**Taken together, the powers agreed to be transferred under the Heads of Agreement are intended to deliver three important overarching improvements:**

- 1** A stronger Scottish Parliament within the UK.
- 2** A more accountable and responsible Scottish Parliament.
- 3** A more autonomous Scottish Parliament.

At the time of the publication of the Heads of Agreement, we recognised the proposals as offering a significantly enhanced devolution settlement for Scotland and we congratulated those involved for reaching an agreement in such a tight timescale. Nevertheless, we also recognise that, since the publication of Smith Commission report, there has been further public debate as to whether the devolution package proposed by the Smith Commission is sufficient. The publication of draft clauses on 22 January will allow a further period of debate to ensure the package of proposals is coherent and comprehensive.

The timing of the UK Parliament general election in May 2015 creates an interruption in the flow towards fulfilment of the Heads of Agreement and their implementation into law. However, the general election also presents an opportunity to discuss Scotland's constitutional settlement.

The question of Scotland's constitution, devolution and possible position as an independent country has been a regular feature of general elections for decades. Nevertheless, the recent referendum and the three-year build-up generated an unprecedented level of debate and discussion about Scotland's place in the UK and wider international community.

The promise of more powers from pro-union parties in the event of a 'no' vote also contributed to a debate about what devolutionary settlement would work best for Scotland as a modern, dynamic and diverse country in the 21st century.

We believe that, following the 'no' vote in the referendum, now is the time to agree and deliver a devolution settlement that can, with the support of the Scottish people, truly stand the test of time. We also believe that Scotland's political parties should, following the publication of the draft clauses, provide as much clarity as possible as to what they propose and would support, whether that is the recommendations of the Smith Commission or an alternative package of powers. This will allow Scottish voters to make an informed choice when it comes to casting their votes in May 2015.

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**We therefore urge all political parties to give careful consideration to:**

1. The importance of constitutional reform.
  2. The inclusion of clear and specific commitments to the delivery of promised reforms in their own party manifestos.
  3. The impact of further devolution for Scotland on the whole of the UK and to develop inclusive methods for consultation on future constitutional change including the option of a constitutional convention.
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**We urge the newly elected UK Government to:**

1. Bring forward legislation as soon as practicable after the election to deliver enhanced powers for the Scottish Parliament through the implementation of the recommendations of the Smith Commission report and consult widely on any additional powers which may feature in a final devolution settlement.
  2. Consider the further specific devolution suggestions which we made in our own submission to the Smith Commission, in particular the devolution of regulation of estate agency in Scotland to the Scottish Parliament and the devolution of the remaining aspects of solicitor regulation in areas such as immigration advice, financial services advice and insolvency practice.
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# 3

## Providing long-term clarity on the UK's membership of the European Union

### Where we are now

The UK has been a member of the European Community and subsequently European Union since 1973. Membership was reaffirmed in a referendum of the British people in 1975. The structure of the EU, its decision-making and democratic processes have changed radically in 40 years, just as the world itself has changed.

In January 2013, Prime Minister David Cameron promised to hold a referendum on the question of the UK's continued membership of the EU in 2017. This would follow a period of renegotiation of the terms of the UK's membership if the Conservative Party won an outright majority at the next general election.

As a firmly non-partisan organisation, we do not intend to advocate one view or another in respect of the UK's membership of the EU. This is consistent with our position in the recent referendum on Scottish independence. We recognise that there are differing views, both within and outwith our own solicitor membership, and that the debate will develop and change, just as it did on the question of Scotland's place within the UK.

Whether there is an EU referendum or not, the debate around the UK's place in Europe will continue. Without taking a position, the prospect of withdrawal raises a number of serious issues which we urge the parties to give serious consideration to as part of their commitment to serving the best interests of the UK and its people ahead of the election in May.



## i) Economic implications

As a member of the EU, the UK has been a key player in the development of the Single Market, pressing for further liberalisation and removal of internal trade barriers, and contributing to the framing of all rules and regulations affecting the Single Market.

The UK's membership of the EU has allowed significant foreign investment to flow into the UK, as it is viewed by many of the large economies such as the US, China, India and Japan as their gateway into the EU.

In the medium term, there is a real risk that any uncertainty caused in the run-up to a referendum could lead to foreign companies diverting or postponing investment into the UK. We know from changes in the market prior to the recent referendum on Scottish independence that this is a real possibility and would arguably occur on a much larger scale. In the longer term, it is likely that business investment and production could shift away from the UK towards other parts of the EU: in part because of the attractiveness of free trade within the EU where goods are able to move freely with no border controls.

Similarly, UK businesses importing goods from the EU will be faced with additional costs and compliance to deal with. The knock-on implications could be extensive, for example, with less investment coming into the UK.

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### **We would therefore urge the political parties to give careful consideration to:**

1. The benefits of EU membership through enhanced market access and competitiveness as weighed against the disadvantages of increased regulation.
  2. The ability of the UK to influence market rules on businesses' ability to compete and whether losing that influence would be to their detriment.
  3. How to maintain any economic benefits and barrier-free access to critical markets after any exit from membership of the European Union.
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## ii) Constitutional implications

The UK Government has opted out of around 130 pre-Lisbon Treaty criminal measures. The practical result of this was that in some cases the UK opted out of standards it already met, such as minimum penalties for drug trafficking. The UK has subsequently opted back into 35 of those measures. Not only would withdrawal from the EU risk endangering this process, but in this one relatively small area it has been estimated that recreating the desired measures through bilateral treaties could require nearly 1,000 separate instruments.

The question of EU membership was a significant feature of the Scottish independence referendum campaign. The Smith Commission report – setting out plans for devolving additional powers to Scotland – has recently been published. Careful consideration would need to be given to the impact of any greater decentralisation across the UK and whether any EU exit would create constitutional problems within the devolution settlement.

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### **We would urge the political parties to give careful consideration in their manifestos to:**

1. How the UK Government would give a meaningful voice to all nations within the UK during any EU renegotiation process.
  2. Whether the major policy, legislative and administrative complexities that an EU exit would cause would have a detrimental effect on intra-UK relations.
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## iii) How will it affect the legal profession?

UK membership of the EU has brought significant benefits to solicitors, law firms and their clients, particularly through the ability to trade and provide services across the EU and to seek effective redress to cross-border legal issues. Solicitors play an important role in facilitating the smooth operation of the economy, and by dealing with clients throughout the EU on a broad range of legal issues, solicitors seek to ensure that the rights of consumers, employees and businesses are protected.

One of the main benefits of the Single Market for the legal profession is the lawyers' directives which allow solicitors to cross borders temporarily or permanently under their home title, and to practise anywhere and in most areas of law throughout the EU<sup>1</sup>.

The impact of an EU exit would be felt beyond lawyers' practice rights. Loss of influence would be felt across a host of substantive laws too – company, family, succession, crime – which would continue to apply in the EU to the million or so UK citizens living there.

It is for these reasons that the legal profession has a direct interest in gaining long-term clarity around the UK's position within the EU and the future role of the UK at the heart of EU rule-making.

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### **We would urge parties to:**

1. Recognise the contribution that the legal profession, working within a single market, makes to the UK economy.
  2. Ensure that the legal profession is consulted prior to making any policy decisions with regard to continued EU membership.
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<sup>1</sup> Temporary provision of services – 77/249/EEC, and permanent establishment – 98/5/EC

# 4

## Legal services at the heart of a growing economy

### Where we are now

Following a pronounced and protracted economic downturn, there is strong evidence to show that the Scottish and UK economies are on the road to recovery. Over the last 12 months, we have seen continual, albeit limited, economic growth along with welcome rises in employment and corresponding falls in unemployment. Economic forecasts for 2015 are predominantly positive with both the manufacturing and services sectors expected to grow.

Nevertheless, challenges in the Eurozone and other international economies along with the recent significant reductions in the price of oil demonstrate how the economic recovery cannot be taken for granted. Indeed, our own polling of Scottish solicitors continues to show a mixed picture when it comes to economic optimism. That is why a sustained effort is required to ensure growth is maintained and reaches all parts of our society.

One of the most welcome developments of recent years has been the growing recognition within government of the importance of our legal sector, not just to civic Scotland but as a significant economic generator in its own right.

The legal sector in Scotland now contributes over £1 billion to the Scottish economy each year. It is responsible for over 20,000 highly skilled jobs, and the services provided by solicitors are critical to the smooth running of the economy, not least in the property market and helping people to set up their own businesses. The growing numbers of in-house solicitors also make a critical contribution to the success of the companies and organisations that employ them.

Many of the sectors upon which Scotland depends so heavily – energy, financial services, the life sciences, food and drink – all rely on high quality, expert legal services to thrive, whether they are provided in-house or through private practice. Put simply, a successful Scotland needs a successful Scottish legal profession.



The number of practising Scottish solicitors is now at an all-time high of over 11,000. Whilst some firms have struggled during the sluggish economic recovery, many firms have seen profits bounce back. The number of unemployed lawyers is still relatively low and trainee numbers have been recovering from the sharp downturn seen at the height of the recession. More firms are now looking to expand internationally and recent initiatives such as the Scottish Arbitration Centre have served to highlight Scotland as an effective location for international dispute resolution.

However challenges remain and the focus of the next UK Government must be on continuing to rebuild our economy and to support businesses to grow and create new jobs. Improving access to capital, reducing bureaucracy, support for taking on new staff and incentives for training and development are all important, particularly for small and medium sized companies. This is especially significant for the legal sector given the vast majority of our legal firms have three partners or fewer, with half of those working as sole practitioner businesses.

As the legal sector changes, more firms are working cross-border and operating internationally. In 2013, the UK Government published a revised plan for growing UK legal services internationally. We warmly welcomed this plan, which recognised the importance of Scotland and its legal jurisdiction, as well as the skilled legal capability which exists within Scottish law firms.

Since the publication of that plan, the Ministry of Justice, the Department for Business, Innovation & Skills, the Scotland Office and the Office of the Advocate General have all provided practical support and advice for firms, particularly those looking to expand internationally. This has been important given the daunting and challenging nature of exporting, especially for new or inexperienced companies.

Key development agencies such as UK Trade & Investment have also been working with Scottish Development International and others in developing marketing materials and common messaging to promote Scotland's legal capability to overseas markets.

The tangible effect of this has been coordination and cooperation on an unprecedented level, with the Law Society working in partnership with the UK and Scottish governments along with agencies and other bodies such as the Faculty of Advocates, Scottish Financial Enterprise and the Scottish Council for Development and Industry in the promotion of the legal sector.

In the build-up to this general election and beyond, it is important that such effort is maintained and that further action is taken to ensure the legal sector continues to make its substantial contribution to the Scottish economy and recovery.

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### **We therefore urge the political parties to give careful consideration in their manifestos to:**

1. Additional measures which encourage banks to improve the lending environment, particularly for small and medium sized companies.
  2. Maintaining core protections for the public whilst focusing on removing unnecessary regulation on business which can impact on small business start-ups and the willingness of smaller employers to maintain or take on additional staff.
  3. Further incentives for hiring new staff as well as the training and development of existing employees.
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### **We also urge the UK Government to:**

1. Continue to recognise the importance of the legal sector to the continued economic recovery and the position of Scotland in providing high quality and cost effective legal services, both domestically and internationally.
  2. Refresh and update the plan for growing legal services in the next UK Parliament, learning the lessons and building on the success of the last three years.
  3. Continue to use its own extensive experience and expertise in promoting global trade and supporting solicitors and firms looking to enter new markets.
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[www.lawscot.org.uk](http://www.lawscot.org.uk)

The Law Society of Scotland  
Edinburgh  
Legal post: LP1 - EDINBURGH 1

Telephone: +44 (0) 131 226 7411  
Textphone: +44 (0) 131 476 8359  
Email: [lawscot@lawscot.org.uk](mailto:lawscot@lawscot.org.uk)

[www.lawscot.org.uk](http://www.lawscot.org.uk)

