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Delegated Powers and Law Reform Committee
The Scottish Parliament Edinburgh
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Copied to Equalities, Human Rights and Civil Justice Committee

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Dear Convener,

Regulation of Legal Services (Scotland) Bill

I am writing to the committee following the Minister for Community Safety's letter to you of 16 November.

When I appeared before the committee on 24 October, I set out the Law Society's deep concerns over the provisions in the above Bill which would confer unprecedented new powers on the Scottish Government to intervene directly in the regulation of the legal profession. Given the concerns we and others have raised, we warmly welcome the Minister's recognition at how the Bill needs to be amended at Stage 2.

The Law Society met with the Minister on 8 November and received a high level options paper on delegated powers from Scottish Government officials on 9 November. We discussed the options set out in that paper with Scottish Government officials on 16 November. These were the first occasions on which we discussed the Scottish Government's plans to amend the Bill with respect to delegated powers. There had been no discussion with the Scottish Government before these two meetings on Ministers' plans to amend Sections 5, 19, 20, 35, 41 and 49.

Both of these recent meetings have been highly constructive. While some options have been discussed, we have not yet seen any draft amendments. Given this, it is not possible for us to know whether the government's approach will fully address our concerns.

However, we are conscious that, when the Minister appeared before your committee, she said; "we are trying to remove the role of ministers from the bill and design the process so that there will be no Government interference" [Official Report, 7 November 2023, column 17]. We were greatly encouraged by this statement and look forward to getting sight of the specific amendments which deliver on this commitment.

In her most recent letter to you, the Minister also made references to there being existing provisions from the Legal Services (Scotland) Act 2010 in terms of Ministerial powers of intervention in legal services.

It should be stressed that the 2010 Act was passed in order to legislate specifically for wholly new forms of non-solicitor owned legal businesses (licensed legal service providers, LLSPs). At the time of the 2010 legislation, LLSPs were unknown and, for many, controversial new legal entities. The debate around even the principle of allowing such business structures was a highly polarised and contentious one. The equivalent alternative business structure provisions in England & Wales were not in force until 2012. Given all of this, at the time the 2010 Act was under consideration it was recognised that the Scottish Government should have greater levels of oversight and, if needed, intervention.

However, we believe it is wholly wrong to equate the provisions of the 2010 Act, designed for untested new types of businesses, with what the Scottish Government has now sought with respect to established law firms and individual solicitors. Indeed, before the Bill was published, there had been no suggestion from the Scottish Government that it would seek such sweeping new powers of interference in existing law practice. The Scottish Government's own 2021 consultation on legal services regulation made no mention of this, hence why the provisions in the current Bill were met with such surprise and shock.

Nevertheless, we remain encouraged by the Minister's latest approach to the Bill. As always, we are keen to find a way forward that allows for a proportionate and modern regulatory scheme while also respecting core constitutional principles around the rule of the law and the independence of the legal profession from the state.

Yours sincerely,

Rachel Wood
Executive Director of Regulation

