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The Scottish Parliament
Edinburgh
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By email: ehrcj.committee@parliament.scot

18 December 2024

Dear Convener

Regulation of Legal Services (Scotland) Bill

I am writing to you to provide an overview of the amendments lodged in my name for consideration in respect of the Regulation of Legal Services (Scotland) Bill at Stage 2.

I have included an Annex below which outlines the central amendments which I consider will be of most interest to the committee, as they are designed to address the recommendations of the Committee at Stage 1 and ongoing stakeholder engagement. I hope the Committee finds this letter of assistance.

Yours sincerely,

SIOBHIAN BROWN

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Annex

Overview of Scottish Government amendments in respect of the Regulation of Legal Services (Scotland) Bill at Stage 2

PART 1 - Regulatory framework

- **Sections 2 and 3:** Regulatory objectives and their application – amendments in response to stakeholder engagement to provide clarification as to how the objectives in respect of ‘effective communication’ (No.39) and ‘economic growth’ apply (No.41).
- **Section 5:** Scottish Ministers’ power to modify regulatory objectives and professional principles - Reflecting the Delegated Powers and Law Reform Committee recommendation at paragraph 30 of its stage 1 report, and following engagement with stakeholders, an amendment to remove this provision (No.43).
- **Section 8:** Ability to reassign regulators to a different regulatory category - an amendment in response to the recommendation at paragraph 100 of the Committee’s stage 1 report and following stakeholder engagement, to narrow the scope of section 8 so that the power to change a regulator’s category may apply only to ‘accredited regulators’ under Part 1 Chapter 3 of the Bill (or bodies with an approved scheme to enable its members to acquire rights to conduct litigation and rights of audience), and so that the power may only apply where it is requested and approved by the Lord President (No.50).
- **Sections 13 & 16:** Annual reports of regulators – amendments require regulators to send their annual report to the Lord President rather than the Scottish Ministers following engagement with stakeholders (No.71 & 81).
- **Section 14:** Compensation funds – An amendment so that there is a requirement for the Lord President’s consent to Ministers making regulations in relation to the fund. The amendment also sets out the consultation procedure in relation to obtaining consent (No.74).
- **Section 17:** Register of regulated legal services providers held by regulators – amendments which require additional information to be held on the register, for example information that a practitioner had been subject to disciplinary action, in response to engagement with stakeholders (No.84-90).
- **Sections 19 & 20** (Including Schedule 2) – Review of the regulatory performance of a regulator by Scottish Ministers and measures open to Scottish Ministers following a review of performance – Amendments to transfer responsibility for both to the Lord President and to refine the sanctions available in response to the recommendation at paragraph 254 of the Committee’s stage 1 report and following stakeholder engagement (No.93-178).
- **Sections 21 to 24:** Special rule changes (allows a regulator to waive certain rules in relation to an applicant) – amendments to address concerns of certain stakeholders, while retaining transparency and appropriate oversight in the process (No.179-199).
- **Sections 25 to 37:** New regulators of legal services – amendments to provide that the Lord President alone (rather than together with Scottish Ministers) will consider any application by a body seeking to become an accredited regulator. In addition, provisions to provide the Lord President a greater role in specifying the regulatory matters to be dealt

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with in a regulatory scheme and the review of the scheme as well as in relation to the exercise and surrender of acquired rights to provide legal services, in response to the recommendation at paragraph 254 of the Committee's stage 1 report (No.200-269).

- **Sections 35 & 49:** Power for Scottish Ministers to intervene – At section 35 amendments to provide the Lord President a role to act in relation to accredited regulators who may have encountered difficulty in some way (such as financial collapse). In addition, to provide the Lord President a power to enable another regulator to step in to take over regulation in certain cases or to request the Scottish Ministers to make regulation to amend the receiving regulators functions in other cases. At section 49 the power of the Scottish ministers to, by regulations, establish a body to be a regulator or to allow themselves to regulate legal businesses is removed in response to the recommendation at paragraph 254 of the Committee's stage 1 report (No.270 & 309).

PART 2 – Regulation of legal businesses

- **Section 39:** Requirement for legal businesses to be authorised to provide legal services – amendment which will allow the Law Society to 'passport' existing authorised legal businesses (ALBs) into authorisation when the relevant provision of the Bill is commenced (No.275).
- **Section 41:** Rules for authorised legal businesses – amendments to provide that a category 1 regulator cannot amend its ALB rules without the approval of the Lord President, in response to stakeholder engagement (No.280).
- **Section 46:** Reconciling different rules – ALB rules must include provision for reconciling different sets of regulatory rules. The Lord President's consent is required where the Scottish Ministers are requested to make regulations making provision about any regulatory conflict that may arise. The amendment also sets out the consultation procedure in relation to obtaining consent, in response to the recommendation at paragraph 254 of the Committee's stage 1 report (No.305).

PART 3 – Complaints

- **Section 51:** Renaming the Scottish Legal Complaints Commission (SLCC) – removing the provision that changed the name of the SLCC to the Scottish Legal Services Commission in response to the recommendation at paragraph 145 of the Committee's stage 1 report (No.312).
- **Section 52A:** complaints initiated by the SLCC – amendment to introduce new power for the SLCC to raise a conduct or regulatory complaint in its own name in response to the recommendation at paragraph 147 of the Committee's stage 1 report (No.315).
- **Section 54A:** SLCC process on complaints – introducing an ability for the SLCC to discontinue a complaint where the practitioner has offered a reasonable settlement, but the complainer does not agree, to address concerns that this can draw out a conclusion without a reasonable scope of a better settlement (No.319).

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- **Section 58:** Review committee – changes to include decisions about whether complaints are conduct or regulatory complaints, and decisions about the initiation and discontinuation of services complaints. Intended to make the process clearer and more efficient (No.338-346).
- **Section 60** – Power to examine documents – new ability for SLCC to uphold a complaint where practitioner fails to provide documents without a reasonable excuse in response to the recommendation at paragraph 187 of the Committee’s stage 1 report (No.349).
- **Section 61** – Power of SLCC to request practitioner’s details in connection with complaints to be provided “without delay” (No.357-358).
- **Section 63** – Handling of conduct or regulatory complaints – reverting to original position allowing SLCC to make recommendations rather than directions when the SLCC reports on its conclusions following an investigation into a handling complaint in response to stakeholder engagement (No.362-369).
- **Section 65** – Voluntary register of unregulated providers of legal services – introducing a requirement rather than discretion for the SLCC to set up the register in response to stakeholder engagement (No.372).
- **Section 69** – Monitoring and setting of minimum standards by the SLCC – The amendments provide that before the SLCC can issue guidance that sets minimum standards to relevant professional organisations about how they are to investigate and determine conduct complaints and regulatory complaints it must consult the Lord President (and others) (No.395-411).
- **Section 70** - Similar changes as to section 69 regarding guidance issued relating to the operation and effectiveness of the Client Protection Fund (No.412-419).
- **Section 71A** – Obtaining of information from practitioners – introduces the ability for the SLCC to request first-tier complaint information directly from practitioners in response to stakeholder engagement (No.422).
- **Section 72** – A requirement on the SSDT to have regard to convictions in conduct hearings in response to stakeholder engagement (No.428).
- **Section 76:** SLCC reports - an amendment which requires the SLCC to include information on the work of the Review Committee within its annual report to ensure the process is transparent in response to the recommendation at paragraph 165 of the Committee’s stage 1 report (No.450).

PART 4 – Miscellaneous

- **Section 81:** Removal of practising restrictions: law centres, citizens advice bodies and charities – clarification as to how the provision should operate in response to stakeholder engagement (No.452-454).
- **Sections 82 – 84:** Offence of taking or using the title of lawyer or pretending to be a regulated provider – Refinement of the provision following engagement with stakeholders (No.455-457).

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- **Section 86** – Power of the Scottish Ministers to by regulations adjust what constitutes restricted legal services - amended to be only available following a request to do so, and with the consent of the Lord President and consultation having been carried out (No.458).
- **Section 86A** - The Lord Presidents functions – introducing a power for the Lord President to make rules in connection with the exercise of the Lord President’s functions under Part 1 or 2 of the Bill (No.459).

PART 5 – General

- **Schedule 1, Paragraph 6** – Guarantee Fund: further provision – Power of Scottish Ministers to, by regulations, make provision in relation to the Client Protection Fund is amended to be only available following a request to do so, and with the consent of the Lord President and consultation having been carried out (No.15).
- **Schedules** – Technical changes to make changes to reflect the corresponding substantive changes set out in the Bill.
- **Association of Construction Attorneys** – update name references through the Bill from the ‘Association of Commercial Attorneys’ to the ‘Association of Construction Attorneys’, in line with the change of name of the regulator.
- **Other minor and technical changes**

Additional amendments following engagement with stakeholders

Amendments to the Solicitors (Scotland) Act 1980 following engagement with the Law Society

(Schedule 3 of the Bill)

- **The Roll** –
 - Section 15 – Practising certificates – Where the Law Society issue a practising certificate subject to conditions, enable at their own initiative, or request of the solicitor, impose, vary or remove conditions.
 - Section 17 – introducing flexibility in the date practising certificates are issued.
- **Investment business certificates** – Updating name throughout 1980 Act, from ‘an investment business certificate’, to ‘license to carry on incidental financial business’, in accordance with current practice.
- **Conduct and discipline of solicitors** – New power for the Law Society to discontinue a complaint in the public interest or close a complaint where settlement reached with practitioner in response to paragraph 144 of the Committee’s stage 1 report.
- **Regulatory complaints and complaints against incorporated practices** – update the 1980 Act to add sanctions and appeal rights in relation to regulatory complaints.

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- **Guarantee Fund** – Change name throughout 1980 Act to Client Protection Fund and provide flexibility on the value of the fund and collection from the profession.
- **Register of European lawyers** – Updates to reflect changes being made to conduct complaint investigation process for solicitors.
- **Safeguarding of clients’ interests** – Where a sole solicitor has died or is incapacitated, been struck off, suspended or restricted; or where an incorporated practice has had its recognition revoked, the Law Society require to step in to deal with the client account/s, changes to allow the Law Society to respond more swiftly in such cases to act on behalf of the client.
- **Use of Criminal Convictions and Civil Findings** - Introduce a power for the Law Society to rely on proof of criminal convictions and civil findings in the disciplinary process to reduce delay in the investigation of complaints.
- **Conveyancing and executry practitioners** – Updates to align with changes being made in respect of complaint handling for solicitors.
- **Other miscellaneous changes**
- **Scottish Solicitors Discipline Tribunal**
 - Introducing a requirement for solicitor members of the Tribunal to hold a practising certificate which is in force. Introducing powers of chair and vice-chair to delegate functions. Allow the Tribunal to deal with certain cases, rather than remit back to the Law Society to reduce delay in conclusion of the case in response to paragraph 144 of the Committee’s stage 1 report. Other miscellaneous minor and technical changes.

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