



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities, Human Rights and Civil Justice Committee

**Tuesday 5 December 2023**

**Session 6**



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Pàrlamaid na h-Alba

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**Tuesday 5 December 2023**

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**EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE**  
**26<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Kaukab Stewart (Glasgow Kelvin) (SNP)

**DEPUTY CONVENER**

\*Maggie Chapman (North East Scotland) (Green)

**COMMITTEE MEMBERS**

\*Karen Adam (Banffshire and Buchan Coast) (SNP)

\*Meghan Gallacher (Central Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Paul O’Kane (West Scotland) (Lab)

\*Annie Wells (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Siobhian Brown (Minister for Victims and Community Safety)

Leanna MacLarty (Scottish Government)

Simon Stockwell (Scottish Government)

Jamie Wilhelm (Scottish Government)

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Equalities, Human Rights and Civil Justice Committee

*Tuesday 5 December 2023*

*[The Convener opened the meeting at 09:45]*

### United Kingdom Subordinate Legislation

#### Civil Jurisdiction and Judgments (Saving Provision) Regulations 2023

**The Convener (Kaukab Stewart):** Good morning and welcome to the 26th meeting of 2023 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies this morning.

Our first agenda item is consideration of a type 1 consent notification for the Civil Jurisdiction and Judgments (Saving Provision) Regulations 2023. This is a proposed United Kingdom statutory instrument on which the UK Government is seeking the Scottish Government's consent to legislate in an area of devolved competence. On 9 November 2023, the Minister for Victims and Community Safety notified the committee of the UK SI. The committee's role is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government in the manner that it has indicated.

I welcome to the meeting Siobhian Brown, who is the Minister for Victims and Community Safety, and her supporting officials. Simon Stockwell is head of family law policy and Stephanie Smith is a senior policy adviser on courts and tribunals. Both are from the Scottish Government's justice directorate. Good morning and thank you for joining us.

I refer members to paper 1 and I invite the minister to make a brief opening statement.

**The Minister for Victims and Community Safety (Siobhian Brown):** As members know, the Scottish Government opposed both Brexit and the Retained EU Law (Revocation and Reform) Act 2023. However, we recognise that we need to take technical action to ensure that things work as smoothly as possible. In some cases that involves working with our colleagues at Westminster.

The purpose of the Westminster statutory instrument is to continue the savings that were made at European Union exit to ensure that the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in

Civil and Commercial Matters can continue to apply in certain legacy cases. The 2007 Lugano convention contains rules governing jurisdiction in civil and commercial matters when a case has connections to more than one country, and it contains rules that provide for recognition and enforcement of judgments in such matters.

The convention is a treaty between EU member states, Norway, Iceland and Switzerland, and was entered into by the EU on behalf of member states while the UK was itself a member state. At EU exit, the convention was revoked for the UK because the UK's convention membership was dependent on its status as a member state and because its operation relied on reciprocal application, which would no longer occur.

However, the convention was saved for transitional cases—that is, to save the jurisdiction rules for cases that were commenced before the end of the transition period and to save the recognition and enforcement rules for judgments that were issued in cases that were commenced before then.

The savings provision relied in part on section 4 of the European Union (Withdrawal) Act 2018; section 2 of the Retained EU Law (Revocation and Reform) Act 2023 will repeal section 4 of the European Union (Withdrawal) Act 2018 at the end of the year, which creates a risk that the savings that have been put in place will fall away. The proposed SI will use transitional powers under the 2023 act in order to continue the savings provision. Given that the original savings for transitional cases extended UK-wide, the UK Government proposes to extend the SI UK-wide.

As I said, the Scottish ministers remain opposed to Brexit. However, in order to minimise the damage that EU exit brings, this technical SI is necessary to ensure continuity in respect of relevant judgments and those that were issued before the end of the transition period. It will also save the recognition and enforcement rules for judgments that have been issued in cases that were commenced before the end of the transition period.

The relatively small number of statutory instruments that have been proposed under the 2023 act that are notified to committees—seven so far, including this one—reflects the fact that the Government will never consent to proposals that threaten the vital safeguards and high standards that Scotland benefited from when the UK was part of the European Union. The programme for government commits the Scottish Government to maintaining alignment, where that is possible and meaningful, with EU law, and this SI has implications for devolved responsibilities. I invite the committee to agree that the Scottish ministers should consent to the SI being made.

**The Convener:** Thank you, minister. Do members have any questions?

**Maggie Chapman (North East Scotland) (Green):** Good morning, minister. Thank you for being here this morning. I have a quick question on issues that could have arisen after the transition period.

Given the commitment to alignment that the Scottish Government has made, are there measures in place that we can take independent of the UK legislature on cost savings beyond transition, or is that it? Essentially, I am asking whether there is a way that we can continue to be aligned with the likes of Iceland, Norway and Switzerland beyond the cut-off period.

**Siobhian Brown:** My understanding is that savings will diminish in time and that a limited number are going through at the moment, but I will bring in Simon Stockwell on that question.

**Simon Stockwell (Scottish Government):** Thank you, minister. It might be difficult for Scotland to align by itself, because much depends on international arrangements, which are reserved to the UK Government. The UK Government is planning to sign and ratify the HCCH 2019 judgments convention, which is about mutual recognition of civil and commercial judgments. The UK has just confirmed that it intends to do that: Scotland will be part of that, so there will be moves to ensure that we continue to have mutual recognition with other jurisdictions. However, it is hard for Scotland to do that alone, given that treaty negotiations are reserved to the UK.

**Maggie Chapman:** Thank you. That is helpful.

**The Convener:** Are members content?

**Members indicated agreement.**

**The Convener:** Thank you.

I will move on to the substantive question for this item. Is the committee content that the provisions that are set out in the notification should be made in the proposed UK statutory instrument?

**Members indicated agreement.**

**The Convener:** We agree. Thank you. We will write to the Scottish Government to that effect.

That concludes consideration of the UK statutory instrument. I thank the minister and her officials for their attendance. We will now suspend briefly to allow a changeover of supporting officials for our next agenda item. Thank you.

09:52

*Meeting suspended.*

09:53

*On resuming—*

## **Regulation of Legal Services (Scotland) Bill: Stage 1**

**The Convener:** Our second agenda item is our final evidence session on the Regulation of Legal Services (Scotland) Bill.

I again welcome to the meeting Siobhian Brown, the Minister for Victims and Community Safety. I also welcome her supporting officials from the Scottish Government: Jamie Wilhelm is legal services regulation reform manager in the justice directorate, and Leanna MacLarty is a solicitor in the legal directorate. Thank you for joining us this morning. I refer members to papers 2 and 3. I invite the minister to make a brief opening statement.

**Siobhian Brown:** Thank you for the opportunity to appear before the committee today to discuss the Regulation of Legal Services (Scotland) Bill.

The bill presents a modern regulatory framework that is designed to promote competition and innovation while improving the transparency and accountability of legal regulation and the legal complaints system in Scotland, thereby placing the public and consumer interests at its heart.

The bill is intended to bring benefits to the legal sector and to consumers of legal services. It will make a number of significant changes, including streamlining the legal complaints system and introducing a new regulatory framework, entity regulation and legal protection of the title “lawyer”. The bill will remove restrictions on third sector organisations that directly employ solicitors, which will benefit vulnerable citizens, and it will ease ownership requirements for alternative business structures, which will benefit the legal sector.

There is a great deal of support for the general principles of the improvements that the bill will make to legal sector regulation. As I said last week in my letter to the committee outlining the amendments that we intend to lodge, throughout development of the bill the Scottish Government has been committed to working collaboratively with all interested parties, including the legal sector and those who represent consumer interests. We will continue to do that during the bill’s passage through Parliament. The parties often have differing views on regulation of legal services, which is why we want to ensure that the bill strikes the right balance between the various interests.

Following the introduction of the bill, and having carefully considered the responses to the committee’s call for views, which were published

on 24 August, we acknowledged the concerns that were raised in respect of the role that will be placed on Scottish ministers by the bill. Although the relevant provisions are, of course, only one part of the bill, we wanted to address the concerns, so we publicly stated that we would lodge amendments at stage 2 and work with stakeholders, including the senior judiciary.

As members will be aware, having taken evidence from stakeholders, the current legislative framework underpinning the regulation of legal services and the complaints handling process in Scotland is complex and dated. Not unexpectedly, this is a highly technical and complex bill that will amend previous legislation from 1980, 2007 and 2010. It builds on existing legislative provisions, which is why it is vital that amendments are carefully considered and discussed with all stakeholders.

My officials have been working closely and collaboratively with stakeholders—in particular, the Lord President's office and the Law Society of Scotland. As I said in my letter, we have already come to a firm position on several areas of the bill to amend, and we are close to agreement on other areas.

In the new year, we will update the committee on the areas that will be addressed. I appreciate that the committee has requested sight of the amendments; however, although we are coming close to agreement on positions on most of the amendments, the actual amendments will not be written until we are closer to stage 2. Again, they will be developed through discussion with the Lord President's office and other stakeholders. I recognise the importance of the stage 1 parliamentary process in drawing out stakeholder views as well as those of the committee. Those views will inform our final position and amendments.

Although I intend to lodge amendments to address specific concerns that have been raised, I highlight that they will not detract from the general principles of the bill. On 21 November, Roddy Dunlop KC said to the committee:

“the bill seems to strike the right balance between ensuring and improving the proper regulation of the legal profession on one hand and maintaining the profession's independence on the other.”—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 21 November 2023; c 3.]

Many of the bill's provisions have been welcomed and are designed to benefit both legal professionals and consumers of legal services, which I hope is what we all want. I am happy to take questions.

**The Convener:** Thank you. I will kick us off.

You will have seen the evidence that we have taken from a wide range of stakeholders, including the senators of the College of Justice, who were here last week. I would like a response from you about the issues that were raised by witnesses regarding the powers that the bill will give to the Scottish ministers that might threaten the independence of the legal profession and the judiciary. For instance, I am sure that you will have seen Lady Dorrian having been extensively quoted as saying that she felt that the provisions were “constitutionally inept”. What is your response to that?

10:00

**Siobhian Brown:** The judiciary are raising important constitutional principles about the separation of powers between the Executive, the legislature and the judiciary, and we recognise the absolute necessity of those principles. It is important to be clear about what the bill does: it does not impinge on the independence of the legal profession or the judiciary. I wrote to the committee on 29 November to make clear my intention to amend the bill to address the issues.

The bill builds on the existing legislative framework, which provides a role for ministers to act in the public interest to ensure that regulation is being carried out effectively and transparently. The bill adopts existing checks and balances that require the Lord President's consent and parliamentary scrutiny of use of delegated powers to ensure that any action is in the interests of legal practitioners and the public.

Ministers have had a role in legal regulation in Scotland since 1990. In 2007 and in 2010, Parliament placed further functions on the Scottish ministers in respect of legal services regulation. Having said that, we understand the concerns that have been raised, which is why we have committed to lodging amendments at stage 2, because we want the bill to strike the right balance for the various stakeholders.

**The Convener:** I understand what you are saying about removing the Scottish ministers' role, which you have said you will do. We have heard evidence about the differences between the positions in England and in Scotland. I understand that the Legal Services Board in England is accountable to the United Kingdom Lord Chancellor, who is also the Secretary of State for Justice, which is a political role. Will you confirm that such an arrangement will not be replicated in Scotland?

**Siobhian Brown:** The Legal Services Board is accountable to Parliament through the Lord Chancellor, who is a UK minister with a number of statutory roles in relation to the board and

regulation of legal services. Our bill contains provisions to introduce a role for the Scottish ministers in reviewing and protecting regulation of legal services but, as the committee is aware, we will lodge amendments to transfer the functions to the Lord President and remove responsibility from the Scottish ministers.

**The Convener:** Some reassurance has been taken from your intention to lodge amendments to remove that role, but concern has been expressed that dealing with the issue is not going to be as easy as that, because removing that provision will extensively affect other parts of the bill. Will you reassure the committee on that?

**Siobhian Brown:** Yes—absolutely. My officials are having discussions with the Lord President’s office. Any such amendments will affect other parts of the bill, which is why we have to engage on all aspects of moving forward with the amendments. There is not a straight cut to remove one function and give it to the Lord President; we have to consider the whole bill while we are drafting the amendments.

**The Convener:** You referred to the letter that you wrote to me, which says that you aim to finalise the amendments “early next year”. I need a bit more detail and a bit more reassurance, because we are in December and next year is not far away. An extensive task lies ahead of you and your officials. Does the Government have a more specific deadline?

**Siobhian Brown:** At the moment, officials are working with all stakeholders, including the Law Society of Scotland and the Lord President’s office, and engagement is continuing. We hope to have agreement on most amendments at the beginning of the new year, and I am willing to keep the committee updated on all progress.

**The Convener:** Thank you—that is helpful. Do any colleagues want to come in on that point? No.

**Paul O’Kane (West Scotland) (Lab):** I am trying to understand why we are in the position of having to amend the bill at stage 2. The committee does not have the detail on that and nor do the Lord President and the senators of the College of Justice. The minister would accept that it is highly unusual for the most senior judges in the country to come to a committee of the Scottish Parliament to give evidence. Will she outline clearly what consultation took place with the Lord President and what information he was given about the amendments?

**Siobhian Brown:** When the bill was introduced back in April—with the call for views following in August—I was conscious that it was viewed as being all about the Scottish ministers making a power grab. Officials have therefore been looking at lodging amendments so that the bill does not

focus so much on the powers of the Scottish ministers. There could instead be more of a focus on provisions on which there is general agreement among stakeholders and the legal profession.

I return to the Scottish Government’s response to the consultation analysis published in December 2022. We set out that

“there should be a process for intervention by Scottish Ministers in the light of concerns being raised on how and whether regulators are delivering their regulatory objectives and the operation of regulation in relation to public interest.”

When the consultation came out last year, the legal stakeholders were very positive because I think that they were focused on the possibility that an independent regulator would be proposed and it was not. At that stage, in 2022, there was no resistance to the Scottish ministers’ role; that came only after the bill was introduced in April 2023.

The proposed amendments are complex and we need to engage and get agreement with the Lord President, the Law Society of Scotland and all stakeholders. Until we have that agreement, we will not be in a position to get the lawyers to draft the stage 2 amendments. That work is on-going among officials, stakeholders and the Lord President’s office.

**Paul O’Kane:** I am confused. Last week, when Lady Dorrian was asked directly about what engagement there had been over the proposed amendments, she said that

“high-level suggestions have been made to us”

and she spoke about being “presented with a paper” that the senators felt that they

“could not respond to, because it was lacking in detail. Another paper was submitted to us that had more detail, but at a very high level”.

The senators had

“not looked at detailed proposals for amendment. Insofar as we were able to, we responded to that in as ... helpful a way as we could.”

Crucially, Lady Dorrian said that

“the devil is in the detail”,—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 28 November 2023; c 13, 7.]

and explained that it is not possible to comment on detail that is not there. I am trying to understand why we are in this position.

**Siobhian Brown:** I am happy to address that, and I might get my officials to contribute, as they have been liaising with the Lord President’s office. I agree: the devil is in the detail, but there has been agreement in the discussions with the Lord President’s office and other stakeholders as to what that detail will be when we proceed with the stage 2 amendments.



Leanna MacLarty or Jamie Wilhelm may wish to add something about engagement with the Lord President's office.

**Jamie Wilhelm (Scottish Government):** As has been set out, we have shared two papers with the Lord President's office. Since the previous evidence session, we have shared a third paper in response to that office's request for worked examples of how the amendments would operate in practice. It has asked for the amendments so that it can comment on them, but it is a bit of a chicken-and-egg situation, in that we have to agree a position before we can draft amendments and then seek agreement on the wording of the amendments. It is an iterative process and progress has been made. As the minister has set out, we are close to an agreed position and we are having constructive engagement.

**Paul O'Kane:** Is there time for me to ask a further question?

**The Convener:** There is, yes. I believe that Meghan Gallacher would like to come in after that.

**Paul O'Kane:** I appreciate the degree to which we want to find consensus, and the Lord President and other stakeholders are obviously keen to make a contribution, but would the minister accept that it is for the committee to make a judgment on the amendments, that any changed nature of the bill will once again need to be scrutinised, and that that is a real challenge for the committee in carrying out its democratic function in the timescales that we have?

**Siobhian Brown:** Yes, I recognise that, and that is why I will be eager and keen to share where we are with each of the sections that will be amended, as my letter of last week said. As we make progress and come to agreement with our stakeholders and the Lord President, I will be happy to keep the committee updated on all progress, so that you can take a view on that for your stage 1 report.

**Meghan Gallacher (Central Scotland) (Con):** On the back of the discussions that we have had, I am struggling to understand. There seems to be a chicken-and-egg situation here. We have had to take evidence on a bill that will be substantially amended. Minister, why did you think that it was appropriate for ministers to be directly appointed as a legal regulator? Why has there not been more engagement regarding the amendments? As Paul O'Kane rightly said, the devil is in the detail, but the committee does not know that detail and it seems that senior professionals in the legal field do not know that detail. If you had concerns back in August, when you were getting evidence in response to the call for views, why did you not begin engagement then? I feel that we are clambering around trying to find a way to

scrutinise legislation that we will have to look at all over again when we come back after the new year.

**Siobhian Brown:** When we made the decision back in August, officials did start to engage with stakeholders and with the Lord President's office about the sections that were highlighted and about where to make amendments and come to an agreement.

I appreciate what Ms Gallacher says, but when the bill was introduced, I felt that there was strong opposition to the ministerial powers in the bill and, when Esther Robertson gave evidence to the Delegated Powers and Law Reform Committee, she did not believe that ministers should have a role. I did not want that to detract from the general principles of the bill—although, in a way, it has done that. The general framework of the bill, which will renew the Scottish legal complaints system and make it easier for consumers, is all good and we can move forward and focus on that. I was just trying to take away the part about Scottish ministerial powers. As I said, we will update the committee about any progress on that as soon as we can.

**Karen Adam (Banffshire and Buchan Coast) (SNP):** Minister, is there any risk in amending the bill to give the Lord President additional powers? For example, the proposal to amend section 29 would give the Lord President the sole right to consider

"applications by bodies wishing to enter the legal services sector as new regulators".

Is there a risk that the Lord President might be either too conservative or too slow in deciding which bodies could become new regulators?

**Siobhian Brown:** I saw the evidence from Bill Alexander, who said that it was challenging and sometimes traumatic for the Association of Commercial Attorneys to become a regulator. I think that that is the only organisation to have become a regulator since 1980. I also saw that Lady Dorrian said that it should be challenging to go through that process, so I think that we are striking a balance.

**Karen Adam:** Do you think that the proposed transfer of certain functions to the Lord President alters the general principles of the bill?

**Siobhian Brown:** I do not believe that it does so. As the committee heard in evidence last week, the Lord President already has a significant role in the oversight and regulation of legal services, which is not the same as directly regulating the provision of legal services. The Lord President is not involved in the day-to-day regulation of legal services: he has oversight of some aspects of the Scottish Legal Complaints Commission but does

not consider determining complaints, so I do not believe that that alters the general principles of the bill.

**Karen Adam:** Members of the judiciary have raised concerns that transferring functions to the Lord President risks politicising his role. Others have said that transferring functions might mean that consumer groups will not have enough say. What is your position on that?

**Siobhian Brown:** Thank you for that question. In transferring functions to the Lord President, we will be expanding the current oversight role in legal services regulation. That does not create a new function for the Lord President but expands a role that already exists and operates without any concern about politicisation.

Although the senators indicated to the committee that they cannot agree to any transfer before they have seen the details, it may be helpful to remind members of the senators' written response, which showed that the principle of transferring the review powers to the Lord President was acceptable and that that should be done.

In respect of the consumer voice, the bill expands the remit of the consumer panel, giving it a role in undertaking research to provide quality, evidence-based advice in the sector, in order to ensure that decisions are shaped to meet the needs of the different consumers of legal services, including individuals, businesses and the third sector. The consumer voice is essential in legal services regulation and we are reflecting on the comments of stakeholders that represent the consumer interest in relation to how we might strengthen the bill in that regard.

10:15

**Karen Adam:** That is helpful. Thank you, minister.

**Meghan Gallacher:** Minister, we heard from Esther Robertson last week. I am a little bit confused. Why, despite commissioning it, did the Government reject her report recommending a single legal regulator in Scotland?

**Siobhian Brown:** As the committee has already heard, there were vastly differing views on Esther Robertson's primary recommendation. That was backed up by a consultation that showed that views were evenly split between support and opposition to it. However, there are many areas where there is broad agreement between the stakeholders.

The bill takes a proportionate approach that seeks to balance and deliver stakeholders' key priorities. It requires that all legal service regulators exercise regulatory functions

independently of other functions or activities and introduces greater transparency and accountability of legal services regulation.

On the whole, it was simply due to both sides—the legal profession and the consumers—having polarised views on the recommendation for an independent regulator that the decision was made not to go down that track.

**Meghan Gallacher:** That does not echo the evidence that we have heard in the committee so far. Is it fair to say that, as the bill stands—we have not seen amendments thus far—you have managed to upset all sides of the debate surrounding legal regulation in Scotland?

**Siobhian Brown:** The bill tries to find a compromise in the middle. It is not trying to upset both sides. The Scottish Government carefully considered the Robertson report following its publication and had an extensive discussion with stakeholders. Although the recommendations were supported, there were polarised views from the legal sector as well.

We have heard from stakeholders that there is a lot of support for the bill. For example, Dr Marsha Scott from Scottish Women's Aid said:

"I welcome many aspects of the bill."—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 3 October 2023; c 10.]

The removal of practising restrictions on charities directly employing a solicitor has been welcomed. That will be transformational for charities' ability to support vulnerable people.

There are lots of positive things in the bill. I would not say that it is making both sides unhappy.

**Meghan Gallacher:** The key phrase in that quotation was "many aspects".

The Robertson report sets out the extremely complex landscape of Scotland's legal services regulation, which can often be difficult for the public to understand. Why is the bill making it even more complicated for members of the public to understand?

**Siobhian Brown:** One of the main aims is to simplify the complaints process for the general public. The SLCC will remain the single gateway for all complaints against legal practitioners, although there will be a limited number of exceptions—for example, where a complaint is identified by a regulator.

In the consultation that we did, most respondents—87 per cent—agreed that the single gateway for all legal complaints should be retained. It was argued that a single gateway for all legal complaints is sufficient to bring clarity and transparency to the process for the profession and

consumers and that it makes it simpler for consumers to access legal advice.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good morning to you and your officials, minister. I have a few questions. You will probably acknowledge from having watched the evidence that no stakeholder that we have heard from supports the full package of reforms in the bill. I had to go back through some of the evidence on that myself. You made the point that some aspects of the bill could be lost and many stakeholders have told us that they support certain aspects of it that are relevant to them. How much of an issue is it that support from the groups that we have heard from is not outright and full? Where are you on that?

**Siobhian Brown:** Back in 2015, the Law Society approached the Scottish Government on the need for reform, and that is when Esther Robertson was asked to carry out an inquiry and produce a report. After the report was published, we saw polarised views from the legal sector and the consumer. I do not believe that there is any way that the bill could move forward with both sides on board 100 per cent, because there will always be a conflict between the legal sector and the consumer. It is about trying to find the fine balance between the two, so that we can bring in good legislation to improve things for the legal sector and for consumers.

**Fulton MacGregor:** I hear what you say about striking a balance and I think that the Government has tried to do that. Do you run the risk of ending up with a bill that nobody is very happy with?

**Siobhian Brown:** We have to strike a balance. If we end up with no bill, we will have no legal reform, which is required for the legal sector and consumers. The positive aspects of the bill will still bring progress to reform of the legal sector, even though there might be some opposing views along the way.

**Fulton MacGregor:** Where do you think that there might be more benefits for consumers? I will give a specific example that other MSPs are likely to be aware of from constituency work and from an event that my colleague Bob Doris held last week. It relates to McClure solicitors, which went bust in 2021. I have had a couple of queries from constituents on the issue, but I had not thought about this point before Bob's event last week. Is there anything in the bill that would have helped in that particular situation and that might help in similar situations?

**Siobhian Brown:** Yes. The McClure situation shows the necessity for justice reform to ensure that situations such as that at McClure's do not happen again. I am aware of the number of families who are facing issues as a result of

McClure's going into administration. As MSPs, we will all have been contacted by constituents on that.

I cannot comment on individual cases, but the Scottish Government has taken proactive steps to help to mitigate such situations. Such cases show the need for legal regulation that centres on the public interest and protection of the consumer. The bill will introduce the authorisation of legal businesses. That will bring benefits such as consistency in the way in which legal firms are regulated, with all entities having to meet the same high standards; and greater collation of data, which would enable the regulator and the legal profession to identify and address deficiencies early and take the necessary preventative action.

I know that this is a different bill but, as part of the process for my Trusts and Succession (Scotland) Bill, which is currently going through the Parliament—we have just had stage 2—I heard of the significant practical difficulties that co-trustees may have in administering trusts when a trustee who was appointed in their professional capacity is no longer a member of the profession. I therefore lodged amendments at stage 2 of that bill to ensure that that would not happen in future. With the justice reform bills that are going through, we can address situations such as that at McClure's and prevent them from happening in future.

**Fulton MacGregor:** Can you respond to arguments that we heard from the Law Society and others that the case has not been made for splitting regulators into category 1 and category 2, which will be subject to different requirements?

Is it okay to move on to that area, convener?

**The Convener:** Yes, that is fine.

**Siobhian Brown:** The Law Society has 12,000 members, one third of whom work in-house while the other two thirds predominantly serve the public and handle client money. On the other hand, there are 450 advocates in Scotland, and advocates are members of an independent referral bar. That means that, as a general rule, advocates do not provide their services directly to the public but are available to be instructed by solicitors and other designated professionals and bodies. Similarly, construction attorneys operate in a specialist area of law, and there are 10 practising members of the Association of Construction Attorneys.

It was viewed as a proportionate response to put greater regulatory requirements on the Law Society, as it has substantially more members, at 12,000, than on the Association of Construction Attorneys, which has 10 members. In an evidence session with the committee, the Association of Construction Attorneys said that it would struggle to be a category 1 regulator.

The bill significantly increases the transparency of all three branches of the legal profession and future proofs the framework to provide a risk-based and proportionate approach to any new entrant into the Scottish legal sector.

**Fulton MacGregor:** Thanks. Convener, I have one final question.

**The Convener:** Okay.

**Fulton MacGregor:** Thanks, convener—that is very generous.

We have heard some argument that the system of regulation and complaints handling that is proposed in the bill is too complex. What do you say to that, minister? Do you believe that it is too complex or do you have another view?

**Siobhian Brown:** I do not believe that it is too complex; I believe that we are improving the system. Regulatory complaints already exist in respect of licensed legal services providers and the bill will extend that type of complaint to authorised legal businesses by the introduction of entity regulation. I do not believe that that is making the system more complex; I believe that it is simplifying the system for consumers to access legal advice.

**Fulton MacGregor:** Thank you.

**Annie Wells (Glasgow) (Con):** Good morning, minister and officials. Could you explain why the Scottish Government considers it necessary for solicitors and other regulated professionals to have at least a 10 per cent stake in alternative business structures?

**Siobhian Brown:** I thank Miss Wells for her answer—sorry, her question.

Certain stakeholders, such as the Competition and Markets Authority, support the removal of a minimum ownership requirement entirely, while other stakeholders, including some legal firms, favour retaining the current rule of 51 per cent ownership by regulated professionals, so there was a divergence of views. In the response to the Scottish Government consultation, just over half—52 per cent—of respondents agreed that the 51 per cent majority stake rule for licensed legal services should be removed, compared with 48 per cent who disagreed. Some stakeholders have shifted their view on the issue slightly since the Scottish Government consultation, but our approach in the bill is to seek to strike a balance between the two views.

**Annie Wells:** How did you come up with 10 per cent?

**Siobhian Brown:** I will bring in my officials, as they have that history.

**Jamie Wilhelm:** It was considered that 10 per cent would retain a minimum requirement for a regulated professional to have a stake in a business and that that figure would align with what the minister said about striking the right balance. It was felt that 10 per cent was an appropriate minimum percentage if we were to require the retention of a regulated investment.

**Annie Wells:** Thanks for that. I have one more question, if you do not mind, convener. We have heard various views on whether regulating the title of lawyer could have unintended consequences. I would like to hear your view on that, minister.

**Siobhian Brown:** Public polling by the Government and the Law Society has shown support for the title of lawyer being given the same protection as solicitor. That was considered important in order to protect the consumer, who might not understand the distinction between the two terms when they are seeking legal services from a regulated professional.

I know that the committee heard anecdotal evidence of solicitors being struck off and subsequently providing unregulated legal services to the public using the title of lawyer. Our view is that because of such cases there is a public protection concern involved in protecting the title of lawyer.

**Annie Wells:** Thanks for that.

**Maggie Chapman:** Thanks for your comments so far, minister. I have a couple of questions on the SLCC, on the new body that the bill proposes to establish and on the processes involved.

First, the SLCC considers that, in what is outlined in the bill, the responsibility for dealing with complaints remains split between bodies and that professional bodies might have a conflict of interest. How do you respond to those challenges?

**Siobhian Brown:** I will bring in Jamie Wilhelm to answer that question.

**Jamie Wilhelm:** The bill will require regulators to carry out their functions in relation to regulation separately from any other function, such as the handling of complaints.

About two thirds of respondents to the consultation supported the existing bodies such as the Law Society and the Faculty of Advocates having a continued role in the handling of complaints about conduct. That was viewed as important with regard to quality assurance and continuous improvement in that it feeds back into better practice if the bodies involved in setting the rules also have a role in handling those complaints.

10:30

**Maggie Chapman:** Okay. However, that split retains some of the complexity of the system, which is one of the challenges that Fulton MacGregor and others have alluded to. There is also an issue with the SLCC's assertion that it requires additional powers with regard to both entering its information in a timely way and things such as setting minimum standards. There are questions about whether there are sufficient checks and balances to ensure that the SLCC does not abuse those additional powers. Are there sufficient checks and balances or should we be looking at anything else?

**Siobhian Brown:** I recognise a significant problem for the SLCC with regard to the fact that, each year, more than 300 solicitors do not respond to the request for files. We are working with the SLCC and looking at amendments to strengthen the bill so that it gets the information that it needs. Leanna MacLarty might want to come in on that.

**Leanna MacLarty (Scottish Government):** On the overall checks and balances for the commission, it is accountable to Parliament with regard to its annual report and it has to consult with a number of bodies, including the Lord President and the regulators, in order to make or change its rules. The Lord President also has oversight of the commission's board members in that he can remove the chair of the board if it is felt that that person is unfit to carry out their duties. His approval is also sought if the chair seeks to remove any other member of the board.

On the provisions in the bill to introduce minimum standards, the bill introduces a lot of opportunities for the regulators to be involved in the development of those minimum standards, where the standards relate to the regulator. If, once those standards have been developed, there is still a dispute with the regulator, the bill introduces provisions for that to go to arbitration between the regulator and the commission, if there really is a dispute as to the minimum standard that is being set. If it does not go to arbitration—because that is optional—ultimately, the court can look at the question of the minimum standards and how to resolve the dispute.

Therefore, although the bill strengthens the commission's ability to introduce standards—rather than just recommendations, as the case is now—there is a firm level of accountability to ensure that the standards can be examined and there is a role for the regulator in developing those standards.

**Maggie Chapman:** Okay. Therefore, I suppose that the issue is that the checks and balances that you outline—I understand what they are—are

retrospective in many ways. I am thinking about what would happen before we got to the point when those measures needed to be invoked. Is there enough certainty that those processes would ensure that the new commission would not—I am not saying abuse the powers—act in a way that was not congruent with the principles of the bill and those powers?

**Leanna MacLarty:** The intention and the efforts during the drafting process have certainly been to ensure that it is as collaborative a process as possible. The hope would be that any concerns about proposed minimum standards would be raised and taken account of and, if they were not, that there would be measures to deal with that. We would consider any recommendations for strengthening that process, if it was felt that those measures were not strong enough.

**Maggie Chapman:** Okay, thank you. I have another question but it is on a different issue, convener.

**The Convener:** I just indicated to Maggie Chapman that I wanted to come in on the complaints issue as well, to get a bit more information.

We heard evidence from the SL—I can never remember initials and I do not think that they are a good thing, as they exclude people—from the SLCC regarding the powers that it has. On the one hand it welcomed the changes, but it also argued for more powers. What consideration was given to giving the SLCC more powers?

**Siobhian Brown:** I am open to any considerations that the committee would like to suggest at stage 1. However, at the moment, we are striking a balance with the powers that the SLCC already has. Was it regarding something in particular?

**The Convener:** It was regarding an evidence session where we heard from the SLCC about the issues around getting information. Depending on the complexity of the complaint, the information that the SLCC requested could come back in seven days but sometimes it would be 21 days or 28 days. It was about making that better for the consumer—for the complainant.

**Siobhian Brown:** Over a quarter of solicitors do not respond when the SLCC requests their files, so we are working with the SLCC to see how we can strengthen the bill to ensure that the SLCC gets the information that it needs.

**The Convener:** Okay. Leanna, did you want to come in?

**Leanna MacLarty:** Yes, just to expand on what the minister is saying. In that respect, the SLCC is not necessarily seeking more powers; it is just looking for a better way to get the information.

The SLCC already has the power to require solicitors and other practitioners to provide information. As the minister said, the problem is that they do not always provide that information and then the only recourse that the commission has is to go to court to seek the information that it has a right to obtain as part of processing a complaint. We are working with the commission—as Neil Stevenson said at an earlier committee meeting, I think—to make it easier and to avoid the commission having to go through the court process to obtain the information that it has a right to get.

**The Convener:** Meghan, did you want to come in on this issue?

**Meghan Gallacher:** No.

**The Convener:** Oh, I was too quick there. I will bring Maggie back in.

**Maggie Chapman:** I have another quick follow-up on some of the complexity issues in relation to the commission.

There have been questions from very different stakeholders and very different interests about the complexity that consumers face. Minister, you have talked quite a lot about balance and trying to balance competing views. Have you got the balance right around the different processes and procedures that the faculty, the Law Society and consumers would have to go through in relation to potentially having to jump through different hoops or go to different bodies to pursue complaints? How did you come to the decision that we find in the bill?

**Siobhian Brown:** I think that we got that balance right. One of the main aspects of the bill is to simplify the process for consumers. Leanna or Jamie, with their deeper understanding of what happened with the bill before I took over, can come in on the history.

**Jamie Wilhelm:** As we set out, the consultation analysis showed that it was important for the professional bodies to continue to have a role in conduct complaints. The bill seeks to simplify the current process to make the statutory processes that the SLCC has to go through to examine a complaint from a consumer more streamlined and proportionate. There will then be a swifter consideration of their complaint, which benefits the consumer and the legal professional that the complaint has been raised against.

The bill also allows for the Law Society and the faculty to bypass the single gateway where that is appropriate. Currently, they have to raise a complaint to the SLCC if they have identified an issue. The bill will remove that step so that there is not that ping-pong situation between those bodies. The issue will go straight to the Law Society to

investigate, for example, and it can then move more swiftly to investigate that complaint.

The bill seeks to make the process easier for consumers to access, and it broadens and provides greater consumer protection in respect of complaints against unregulated legal service providers.

**Maggie Chapman:** Thanks—that is helpful. We heard from the consumer panel of the SLCC that it broadly welcomes the simplification proposals in the bill.

Those are all my questions on that topic, but I have a final general one.

**The Convener:** We will pause that for now. I will bring you back in after Meghan Gallacher.

**Meghan Gallacher:** My question is on the issue that Maggie Chapman has raised about striking the right balance between the consumer and the legal profession. We have heard a lot about that this morning, but we have had no real explanation of how it is measured. We need the minister to explain that to the committee and the public. Will the minister summarise the reforms that the bill will bring in a way that will be easy for the public to understand? I am not sure that we are in that space yet, given the discussion that we have had this morning.

**Siobhian Brown:** Sure. It might be easiest if I point the committee to the evidence that has been heard across the board welcoming the changes to make the complaints system easier. Neil Stevenson, the SLCC's chief executive, said that the bill takes

“tremendous steps forward that will reduce complexity and give”

the commission

“extra discretion to deal with particular situations, which should benefit consumers and practitioners.”

Rosemary Agnew, the Scottish Public Services Ombudsman, said that the bill's approach in relation to quality assurance and continuous improvement is

“not just best practice—it enables the development of best practice.”—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 14 November 2023; c 8, 23.]

Rachel Woods of the Law Society of Scotland said:

“We welcome the changes that it brings in with regard to making the system faster and more streamlined, and less complex”

for the consumer. She welcomed

“the ability for the Law Society to raise and begin investigating a complaint directly”,

and she welcomed the reintroduction of hybrid complaints, which she said will, for the consumer,

“speed things up and make things less expensive”.—  
[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 21 November 2023; c 22-23.]

**Meghan Gallacher:** How will striking the right balance be measured?

**Siobhian Brown:** I will bring in Leanna MacLarty to answer that.

**Leanna MacLarty:** I think that that question should go to Jamie Wilhelm.

**Jamie Wilhelm:** The bill has been framed in response to the analysis of the consultation and the views of stakeholders. It was felt to be important that the professional bodies have a role in investigating complaints, as they set the rules for how their members can feed back into that. The bill seeks to provide for a greater focus on quality improvement and continuous improvement. It will increase the commission’s ability to set standards that are based on trends in complaints and best practice. It will also expand the consumer panel’s remit so that it can make recommendations not just about the complaints process, as is the case now, but about the whole framework of legal regulation. It will make the consumer panel a statutory consultee in relation to the setting of rules. The bill very much seeks to insert the consumer voice into the framework.

**Maggie Chapman:** We have heard from different witnesses during our evidence gathering that some of the reforms in the bill are long overdue. We often focus on the areas of disagreement, as we have done in the past couple of weeks. Given those aspects on which there is clear and high-profile disagreement, what is your assessment of the possibility that we will not get to a point at which we can agree to the principles of the bill? Should that happen, who would win and who would lose, given that some people have been waiting for 16 or 17 years for some of the reforms?

**Siobhian Brown:** The committee has heard about the differing views on who should be responsible for regulation. However, there is broad support from stakeholders for the wide content of the bill. The introduction of entity regulation reform of the complex complaints system, the reduction in restrictions in respect of alternative business structures and the ability for bodies such as Scottish Women’s Aid to directly employ legal professionals to support their clients in court all represent significant improvements to the status quo.

I am afraid that I do not think that there would be any winners if the bill was not supported. The question is not necessarily about an alternative bill as such. As the committee is aware, no approach would completely satisfy all the groups. The bill provides a proportionate approach that seeks to

balance and deliver the key priorities for all the stakeholders.

10:45

**Maggie Chapman:** You said that you will lodge amendments at stage 2 to deal with some of the key issues where there is disagreement. It would be unprecedented, I think, to have those amendments any earlier than that, if they were not part of the initial drafting.

I have a general question, which is maybe a little bit cheeky and unfair. If you had known then what you know now and you were designing the bill from scratch, would you have done things a little differently?

**Siobhian Brown:** The bill has a huge, long history that dates back to before I came into my post in April. There has been a lot of work by officials throughout the many years of the bill’s development, and the work is on-going. It has evolved, and we have to continue to listen. We know that opinions are polarised in some areas, which is why I am keen to listen to all stakeholders’ views. My officials and I will work collaboratively with all the stakeholders and the legal profession.

I know that the devil is in the detail and that it is not ideal for the committee not to have the detail of the amendments that we will lodge at stage 2. As Maggie Chapman said, however, the situation is unprecedented in that they will not be drafted by the lawyers until agreement is made with the legal profession, the Lord President’s office and the stakeholders. I am keen to share all the information with the committee as we progress, and to get agreement as soon as we are able to do so.

**The Convener:** Thank you for answering that rather cheeky question, minister. We are all well aware that the initial stages of the bill did not happen on your watch, as it were. Thank you for taking that question regardless.

I think that we all understand that reform is difficult for any organisation. As I sit here, I have been imagining the uproar that would probably be caused among members, let alone anyone else, if there was a bill to reform the Scottish Parliament, and we have only a couple of decades of history. I understand that change and reform are difficult, especially when they are applied to a highly regarded legal profession that has been there for hundreds and hundreds of years.

I am grateful that you have taken the time to give evidence today and that you have written to us. I will take you up on your offer to communicate with us fully, because we wish to do our job correctly and make sure that the reforms are

robust and proportionate. In the light of that, I will also take you up on the offer you made in your opening remarks when you mentioned your letter to me. You said that you could go through the sections in the annex and offer a bit more information on them. That would be helpful for our scrutiny, so could you do that, minister?

**Siobhian Brown:** Yes, convener. The first section that has been highlighted with regard to ministerial powers is section 5, which allows for the regulatory objectives and professional principles to be amended to update them to reflect regulatory best practice. It was included in the bill in response to calls from stakeholders for a permissive and enabling framework of primary legislation that would be flexible enough to respond to future changes in the legal services market by allowing future amendments through secondary legislation. The Scottish Government will, however, accept the recommendation from the Delegated Powers and Law Reform Committee that the bill be amended to remove section 5, and we will lodge an amendment to that effect at stage 2.

The next section is section 8, on the creation of a category system for regulators. It seeks to create an inherent requirement for flexibility to respond to any changes or proposed changes to how a regulator operates or in its membership numbers, and it is intended to future proof the regulatory framework. The Scottish Government acknowledges that the DPLR Committee has recommended that the bill be amended to remove section 8 from the bill. Paragraphs (b), (c) and (d) of section 8(5) are necessary to ensure that the bill accurately reflects any changes to the regulatory framework in respect of new accredited regulators receiving approval, any regulator ceasing to operate or a change in a regulator's name, as recently evidenced with the name change of the Association of Construction Attorneys.

We will—

**The Convener:** I am sorry to interrupt you, minister, but we have that documentation in front of us. In the interest of time, I will stop you, as that letter has been published and it is available to the public. I simply wanted to give you the opportunity to add anything further that you wanted to say.

**Siobhian Brown:** I could go into all the different sections in further detail, but the information is outlined in the letter to the committee.

**The Convener:** That is fine. I am content with that.

I believe that our deadline for stage 1 consideration is 23 February. The committee would be interested to know where you think that you will be regarding the amendments by then.

**Siobhian Brown:** We hope to have the amendments agreed by the new year. I will share the information with the committee, but we hope for agreement in the new year.

**The Convener:** Okay. That is brilliant. I just wanted to check that and push as far as I could to get that commitment.

I have a final question, to which a yes or no answer will be fine. Maggie Chapman made this point but, for absolute clarity, is it the case that it is not possible for us to get sight of the amendments ahead of stage 2 because that simply does not happen?

**Siobhian Brown:** My understanding is that the lawyers will draft them for stage 2, but we will have agreement on the way forward for the different sections with stakeholders and the Lord President's Office. We will be able to provide the committee with detail on that—probably not the exact wording, but the agreed principles for the amendments.

**The Convener:** We would be very grateful for an indication of the intent, which I believe that we are entitled to have.

**Siobhian Brown:** Absolutely.

**The Convener:** That is great. That brings us to the end of this evidence session. I thank the minister and her officials very much for attending.

We will move into private session to consider the remaining items on our agenda.

10:51

*Meeting continued in private until 11:22.*



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