

Regulation of Legal Services (Scotland) Bill

Fairer Scotland Duty Summary

Title of policy, strategy or programme:

Regulation of Legal Services (Scotland) Bill

1. Introduction

The link between legal services regulation and socioeconomic disadvantage

1.1 Socioeconomic disadvantage can often lead to a lack of access to legal services, which can make it difficult for individuals to navigate the legal system. Those from disadvantaged backgrounds may struggle to find and afford legal representation, which can result in the limitation of their legal rights and opportunities.

1.2 Legal services regulation can have an impact on socioeconomic disadvantage by affecting the availability and affordability of legal services. Some argue that current regulations limit the ability of non-lawyers to provide certain legal services, which can make it difficult for those without a law degree to provide affordable legal services to low-income individuals.

1.3 Additionally, regulation can impact the cost of legal services by requiring certain fees, qualifications, and standards. These costs can create barriers to legal representation for those from disadvantaged backgrounds.

1.4 In conclusion, socioeconomic disadvantage and legal services regulation are intertwined in complex ways. The regulation of legal services can impact the availability, affordability, and accessibility of legal representation, which can have a significant impact on those from disadvantaged backgrounds.

The Bill

1.5 The legislation will affect organisations involved in the Scottish legal services regulatory framework, such as: the Law Society, the Faculty, the ACA, the SLCC and the SLCC's Consumer Panel. The public will also be affected by changes made to legislation, particularly in relation to making a complaint against a solicitor or law firm. Legal services regulation has several impacts on equality, including:

- Access to justice: Legal services regulation can impact individuals' access to justice, particularly for those who are economically disadvantaged or have historically marginalised backgrounds. Regulation may introduce entry barriers, while regulation can be helpful in ensuring the provision of quality legal services in a way that meets the needs of individuals from different backgrounds.
- Diversity and inclusion: Legal services regulation also plays a critical role in promoting diversity and inclusion within the legal profession. Regulation can

encourage better recruitment and retention of individuals from diverse ethnic and cultural backgrounds, help to implement policies to reduce communication barriers, and address practices that may be exclusionary.

- Professional standards: The quality and content of legal services. Legal services regulation is instrumental in setting professional standards, which would help ensure the quality and effectiveness of legal services and increase public confidence in the legal system.
- Monitoring and oversight: Legal services regulation typically involves monitoring and enforcement mechanisms to ensure legal practitioners' accountability for ethical, professional, and competent delivery of legal services. This can help in identifying and correcting any discriminatory and unethical behaviour and provide a route to appropriate redress.

1.6 Overall, the impact of legal services regulation on equality is complex and varies depending on the context and the specific regulation involved. However, ensuring access to quality legal services, promoting diversity and inclusion within the legal profession, upholding high professional standards, and providing effective monitoring and oversight, all contribute towards greater equality in the provision of legal services.

2. Summary of aims and expected outcomes of strategy, proposal, programme or policy

2.1 The Bill makes provision in relation to the regulation of legal services. It has five Parts.

- Part 1 introduces the objectives of legal services regulation and the professional principles which apply to those who provide and those who regulate legal services provision in Scotland. Part 1 also introduces a two-category regulatory framework which imposes requirements on all legal services regulators and provides for Ministers to review regulatory performance in certain circumstances.
- Part 2 creates a requirement for legal businesses to be authorised by a category 1 regulator to provide legal services and for category 1 regulators to produce a regulatory scheme for the authorisation and regulation of legal businesses.
- Part 3 makes provision for how complaints in connection with legal services are to be investigated and determined.
- Part 4 makes miscellaneous provision including changes to ownership restrictions to alternative business structures, removing practising restrictions on third sector organisations and the creation of offences around the use of professional legal titles.
- Part 5 makes general provision.

2.2 The overarching policy objective of this Bill is to provide a modern, forward-looking regulatory framework for Scotland that will best promote competition, innovation, and the public and consumer interest in an efficient and effective legal sector. The Bill will implement a number of key recommendations from the 'Independent Review of Legal Services Regulation in Scotland' by Esther Roberton (the Roberton report)¹.

2.3 Firstly, the Bill will implement a modern, forward-looking model for legal services regulation which will build on the existing regulatory framework. This will provide for a proportionate approach that seeks to balance and deliver the key priorities of all stakeholders. The existing regulators will retain their regulatory functions with a greater statutory requirement to incorporate independence, transparency and accountability within their regulatory approaches.

2.4 Secondly, the Bill will reform legal services regulation in key areas:

- Introducing greater protections to consumers through regulation of legal businesses, to run in parallel with the current regime of regulating individual legal professionals.
- Bringing in controls over the use of the title 'lawyer', protecting the use of a professional title for the use of qualified or regulated individuals.
- Reducing restrictions in respect of alternative business structures to encourage competition and innovation in the legal sector and place Scottish firms on an equal footing with counterparts within the UK and other jurisdictions.
- Changing the way complaints about legal services are handled which will benefit both consumers and legal practitioners alike.

2.5 These measures are intended to modernise the existing regulatory framework and provide a proportionate approach which supports growth and competitive provision in the legal services sector while improving the consumer journey and consumer choice for legal service users, by placing consumer interests at the heart of regulation. In addition, the Bill will incorporate appropriate safeguards that deliver a balance between the independence of the legal profession with their duty to work in the public interest.

How consumers access legal services

2.6 The Roberton report set out that Scotland is home to a well-educated, well respected legal profession with a high degree of public trust, of which we can be very proud. However, there is significant potential for "market failure" in the provision of

¹ [Legal services regulation: independent report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/independent-review-legal-services-regulation-in-scotland/pages/1-1-introduction.aspx)

legal services whereby consumers either receive or perceive that they have received a poor service². Consumers are less likely to make a well-informed purchasing decision when consuming legal services versus a typical purchasing decision, because:

- Consumers tend to use legal services infrequently and have limited ability to learn about legal products and service providers.
- Legal services, as well as the law itself, are extremely complex.
- Legal services are often sought during traumatic or stressful circumstances.
- It is often the case that the same providers are responsible for diagnosing problems and offering and executing solutions.

2.7 Legal services contribute to the social value of Scotland. There is significant diversity in the types of legal services people access, often in times of distress or vulnerability. Legal services support individual's wellbeing, promote their continued contribution to society and help to prevent the escalation of problems. Legal services also support a range of commercial matters affecting many different types of organisations, from small businesses to multi-national corporations.

2.8 Ensuring that Scotland is able to maximise the benefits that a strong and independent legal sector represents is a priority for the Scottish Government. It is widely agreed that there are some elements of the current regulatory regime that could be significantly improved. Current restrictions which may inhibit competition and the complex complaints system are key areas in this regard.

How the Bill will improve the consumer experience

2.9 There are a number of provisions in the Bill designed to make it easier for members of the public to access legal services. These improvements may be of particular benefit to those who may not easily be able to access legal services, including those who experience inequality due to socioeconomic disadvantage.

- Changes to the ownership requirements for licensed legal services providers (a type of legal business, sometimes referred to as alternative business structures) may make it easier for legal services providers to set up in areas which have traditionally suffered from a lack of legal services provision.
- An ability for regulators to grant regulatory waivers, opening the door for legal services providers to trial new and innovative uses of technology which may benefit specific user groups.

² Alongside the Robertson report, a report on legal services in Scotland was produced by Europe Economics that considers these issues in more detail: www.gov.scot/About/Review/Regulation-Legal-Services.

- Improving the legal complaints system to simplify the way a legal services consumer can seek redress.
- Improving the transparency of legal services regulation, including a register of all practising legal services providers which is accessible to the public for free.
- Removing restrictions on how charities and other third sector bodies can provide legal services to their clients who may include vulnerable groups.
- Protecting the public by preventing those who have been struck off or are unqualified from using the title of 'lawyer' to provide legal services.

3. Summary of evidence

Sources

3.1 Evidence was gathered from responses to a public consultation.

3.2 A number of bodies and organisations were engaged in the development of the policy proposals, prior to publication of the consultation, throughout the 12-week consultation process and after. These included:

- The Law Society of Scotland (the Law Society)
- The Scottish Legal Complaints Commission (SLCC)
- The Faculty of Advocates (the Faculty)
- The Association of Commercial Attorneys (ACA)
- Which?
- The Competition and Markets Authority (CMA)
- Citizens Advice Scotland (CAS)
- The SLCC's Consumer Panel

3.3 There has been extensive consultation and engagement with key stakeholders, alongside the public consultation exercise.

3.4 The consultation was open for 12 weeks, running from 1 October to 24 December 2021. A series of eight online focus group events were also conducted to gather feedback.

Engagement strategy

3.5 The engagement strategy was designed to raise awareness and encourage participation in the consultation. This included asking stakeholders to share the consultation.

Focus Groups

3.6 The focus groups were highlighted at publication to individuals who had responded to a previous consultation in respect of legal complaints, but were open to anyone. The focus groups took place over MS Teams and consisted of a mix of those from the profession and members of the public with an interest (our target audience). The SLCC, CAS, and Scottish Women's Aid were asked to promote the focus groups to users with lived experience of legal services or the complaints system.

3.7 Eight focus groups took place. A total of 33 individuals attended the focus groups, around 50% of attendees were lay persons and 50% were from within the profession.

Summary consultation

3.8 A shorter, summarised version of the consultation paper was also published alongside the main consultation, intended to be free of technical jargon and covering the key areas that may be of most interest to consumers of legal services and the wider public. This was intended to make it easier and quicker to respond to the consultation.

Business

3.9 Following the publication of the Robertson report Scottish Government Ministers and officials met with representatives of a number of private legal firms and in-house legal teams. In addition, the professional bodies the Law Society, the Faculty and the ACA have been engaged in the development of the consultation and in promoting it to their members.

4. Summary of assessment findings

Which changes, if any, are being implemented?

4.1 The provisions in the Bill recognise the issues raised above. They take account of evidence gained from those with related experience and views expressed through the consultation responses. Some of the provisions are anticipated to address some of the issues the evidence has shown that socio-economically disadvantaged individuals and their families can experience.

Sign off

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