

Regulation of Legal Services (Scotland) Bill

[As amended at Stage 2]

Supplementary Financial Memorandum

Introduction

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Supplementary Financial Memorandum is published to accompany the Regulation of Legal Services (Scotland) Bill (introduced in the Scottish Parliament on 20 April 2023) as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
3. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. This document addresses those amendments with anticipated or potential cost implications. Amendments agreed at Stage 2 which are not covered in this Supplementary Financial Memorandum are considered not to significantly or materially affect the assumptions in the original Financial Memorandum.

Costs on the Scottish Administration

Role of the Lord President

4. A number of amendments at Stage 2 transfer the responsibility for the following areas under the Bill from the Scottish Ministers to the Lord President of the Court of Session.
5. The Lord President would have responsibility for reviewing the performance of a legal services regulator if there is a concern that the regulator is failing in its exercise of its regulatory functions following a request by a specified body, or at the Lord President's own instance. The Lord President will subsequently be responsible for giving consideration as to whether any of the specified measures in the Bill should be

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taken following a review of a regulator's performance, for example setting performance targets or making changes to the regulatory functions exercised by the regulator¹.

6. In respect of Part 1 Chapter 3 of the Bill, it will be the responsibility of the Lord President alone, rather than with the agreement of the Scottish Ministers, to consider and approve any application by a body seeking acquired rights² (or applying to surrender some or all acquired rights). As a new requirement, the Lord President will be required to publish the decision of an application by a prospective regulator seeking accreditation. The Lord President is given the power to act alone (rather than with the Scottish Ministers) to approve any proposals to revise regulatory schemes and direct such revisions to be made by the accredited regulator following a review of their regulatory scheme³. The Lord President would be responsible for giving consideration to the categorisation of a body seeking acquired rights under sections 8 and 29 of the Bill.

7. The Lord President would be required to consider rules in relation to authorised legal businesses⁴ and for such rules to take effect they would require the Lord President's consent, in line with the existing procedure for practice rules.

8. The Lord President is also given powers to make rules in connection with the Lord President's functions under Parts 1 and 2 of the Bill⁵.

9. In respect of the certain delegated powers, regulation-making powers are amended so that the Lord President would require to give consent before regulations may be laid by the Scottish Ministers⁶.

10. In terms of funding, the Scottish Courts and Tribunals Service (SCTS) is an independent public body which is responsible for the administration of the courts and tribunals of Scotland. The SCTS is also responsible for providing administrative services for the Judicial Office for Scotland. SCTS is primarily funded through the Scottish Government's justice budget.

11. The Judicial Office for Scotland is a separate part of the SCTS and was created to provide support to the Lord President in his role as head of the Scottish judiciary. The Judicial Office estimates that it would cost approximately £203,679.97 to set up the functions given to the Lord President under the Bill, £24,578.93 in other one-off costs and £281,118.79 per annum to administer the functions given to the Lord President under the Bill. The recruitment of staff and development of IT systems constitute a substantive part of this. Table 1 provides a summary of the key areas in relation to what

¹ See sections 19 and 20 (and schedule 2) of the Bill

² Such as rights to conduct litigation on behalf of members of the public, rights of audience, and the right to provide other types of legal services

³ See sections 32A and 33 of the Bill

⁴ See section 48(1A)

⁵ See section 86A

⁶ See sections section 8, 14, 20, 41, 46, 86, and new section 32A of the Solicitors Scotland Act 1980 inserted by section 82

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the cost estimate entails. The Scottish Government will explore this with SCTS with regard to implementation of the Bill and the wider funding of the SCTS.

Table 1

<p>Section 8 - Adjusting regulatory categories</p>	<p>Including:</p> <ul style="list-style-type: none"> • preparing and publishing consultation and ingathering responses • publication of documents included with request • consideration of draft regulations
<p>Sections 13 and 16 - Consideration of category 1 and 2 regulators annual report</p>	<p>Examination of detailed reports and briefing the Lord President as to whether reports give rise to any concerns that may merit a review under section 19</p>
<p>Section 14 - Regulations relating to compensation funds and rules regulator needs for such funds (making request, consulting on it and considering draft rules)</p>	<p>Including:</p> <ul style="list-style-type: none"> • preparing and publishing consultation and ingathering responses • publication of documents included with request • consideration of draft regulations
<p>Section 18 - Obtaining agreement from the Lord President to make or amend professional indemnity rules</p>	<p>Including:</p> <ul style="list-style-type: none"> • considering draft rules, corresponding with regulators as required and provide briefing to the Lord President in relation to initial consideration of rules; and • repeating the process for any amendments to the rules
<p>Sections 19 and 20 - Review of regulatory performance</p>	<p>Including:</p> <ul style="list-style-type: none"> • set-up costs including the recruitment of staff, development of suitable IT system, designing a monitoring system and preparing internal guidance and guidance for requestors • annual monitoring of regulatory performance • conducting a review of regulatory performance • implementation and monitoring of sanctions

	<ul style="list-style-type: none"> enforcement of sanctions including legal advice and representation
Sections 21-24 - Special rules changes / regulatory waivers	<p>Including:</p> <ul style="list-style-type: none"> oversight of procedure consideration of what types of waivers the Lord President should be sent, the details of waivers included in regulators' annual reports and deciding on whether waivers should be revoked
Sections 25-37 - Regulation of bodies whose members exercise rights of audience, to conduct litigation or to provide other types of legal services	<p>Including:</p> <ul style="list-style-type: none"> implementation and set up costs (including recruitment of additional staff and developing suitable IT systems) consideration of applications, representations and approval consideration of conduct complaints review of regulatory scheme revocation of rights (on failure to comply with direction) replacement regulatory arrangements draft guidance on how this process will operate <p>In relation to regulation-making procedure under section 26A:</p> <ul style="list-style-type: none"> preparing and publishing consultation and ingathering responses for Lord President's consideration publication of documents included with request; and consideration of draft regulations
Sections 41 and 48 - Authorised legal business rules	<p>Including:</p> <ul style="list-style-type: none"> Considering draft rules, corresponding with regulator as required and provide briefing to Lord President in relation to initial consideration of rules; and repeating the process for any amendments to the rules

Section 45 - Financial penalties in practice rules	Consideration of draft regulations and briefing the Lord President
Section 46 - Regulatory conflicts	Including: <ul style="list-style-type: none"> • monitoring rules • preparing and publishing consultation and ingathering responses included with request • publication of documents • consideration of draft regulations
Section 47 - Monitoring performance of authorised legal businesses	Including: <ul style="list-style-type: none"> • design system for monitoring performance of ALBs • undertake review of ALB responsibilities from legislation • monitor ALB responsibilities • consideration of a request to review performance of ALB
Section 69 and 70 - Minimum standards	Including: <ul style="list-style-type: none"> • consideration of SLCC initial proposals for guidance • respond to consultation
Section 71 - Enforcement of minimum standards	Consideration of issue and appointment of arbitrator
Section 75 - Consumer panel recommendations to the Lord President	Including: <ul style="list-style-type: none"> • consideration of recommendations • research and correspondence with Panel as necessary • implementation of recommendations
Section 86 - Power to adjust restricted legal services	Including: <ul style="list-style-type: none"> • consideration of request from the Scottish Ministers • preparing and publishing consultation and ingathering responses • publication of documents included with request • consideration of draft regulations

Section 86A - Lord President's functions - rule making	Including: <ul style="list-style-type: none">• identifying what rules are needed• drafting rules and carrying out internal checks• consultation• publication of documents• repeating process for any amendments needed
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Costs on other bodies, individuals and businesses

Recovery of expenses

12. An amendment at Stage 2 provides the Law Society of Scotland with powers to recover costs in cases where they require to make certain regulatory interventions⁷. This may result in expenses to individual legal firms where a regulatory intervention is required. As an example, the Solicitors Regulation Authority in England and Wales recovered between £1.1 million and £4.7 million in intervention costs and compensation fund payments between 2016/17 and 2022/23, with the number of interventions ranging annually from 25 to 65 (an approximate average of 45, or 0.5%, of the total number of legal firms per year)/ This suggests that a single intervention could be estimated at around £65,000 when intervention costs and compensation fund payments are taken into account⁸. In addition, there are more law firms in England and Wales than in Scotland - around 9,000, and there are more large law firms⁹. There are around 1,000 law firms in Scotland, with the majority small or mid-sized in comparison¹⁰. Therefore, the average estimated number of regulatory interventions may be around 5 per year (0.5% times 1000) and the average cost per intervention may be lower in respect of Scotland, as there are more small to medium legal firms, which may be less prone to large scale regulatory compliance failures¹¹. Each case may differ based on the individual facts and circumstances. As an estimate the average equivalent cost in Scotland may be around £55,000 to reflect the difference in composition of the legal sector in Scotland.

The legal complaints system

13. A number of amendments at Stage 2 are intended to align with the provisions within the Bill which provide for a more proportionate and flexible complaints system. These allow for a decision by the Scottish Legal Complaints Commission not to initiate the investigation of a services complaint or to close a case, following a reasonable settlement being made by the practitioner. They allow for the regulatory bodies to

⁷ See new section 86C of the Bill

⁸ [SRA | Client Protection Annual Report 2022/23 | Solicitors Regulation Authority](#)

⁹ [SRA | Regulated population statistics | Solicitors Regulation Authority](#)

¹⁰ [CMA Scottish legal services research](#)

¹¹ [SRA | Client Protection Annual Report 2022/23 | Solicitors Regulation Authority](#)

discontinue the investigation of a conduct or regulatory complaint (or reinstate the investigation), if it is considered in the public interest to do so. The Law Society of Scotland may also suspend a solicitor where it is considered necessary in the public interest for the protection of the public. A further amendment will allow a complaint to be determined where there is sufficient information to do so, but where a practitioner has failed to comply with statutory requirements to provide information relating to the complaint. In addition, where the Solicitors' Disciplinary Tribunal determine that a complaint does not constitute professional misconduct, but does constitute unsatisfactory professional conduct, it may deal with the complaint and issue a sanction, rather than refer it back to the Law Society. These amendments are intended to complement the efficiencies to the overall complaints system within the Bill, and contribute to achieving the savings as set out in table 17 of the Financial Memorandum, making the estimated savings more probable.

The Consumer Panel

14. An amendment at Stage 2 creates a requirement that the Consumer Panel be adequately resourced to carry out its functions¹². The Bill expands the remit of the Consumer Panel to allow it to make recommendations regarding aspects of the regulatory framework, in addition to being made a statutory consultee in a number of areas, such as where a regulator proposes changes to rules. The Consumer Panel's costs are currently met from the Scottish Legal Complaints Commission (SLCC) budget which is funded by a levy on the legal profession. The Bill makes no changes to the current funding model, that the legal complaints system should be funded by those it oversees. The cost of the annual general levy on the legal profession is inherently linked to the operating cost of the SLCC. It is for the SLCC, operating independently of government, to determine the levy, taking into account complaint volumes, business needs and operational costs, lawyer numbers and other factors. In addition, the changes brought into the complaints system by the Bill will result in potential efficiency savings as set out in table 18 of the Financial Memorandum. These savings as well as potential savings resulting from the reform of the appeal system, as set out in table 19 of the Financial Memorandum, demonstrate potential funding that could be directed to the Consumer Panel without increasing the levy. The following organisations are currently represented on the SLCC Consumer Panel: Citizens Advice Scotland, Competition and Markets Authority, Consumer Scotland, Scottish Women's Aid, Which? and Young Scot. Currently the members give their time voluntarily, with secretariat support and resource for any projects identified by the panel are met from SLCC resources. In terms of estimated costs arising from the amendment, this will comprise panel fees, secretariat and research. This is estimated to be around £100,000 - £150,000 per annum. As a comparison the research costs associated with the Legal Services Board Consumer Panel in England and Wales in 2022/23 were £57,186¹³. It is estimated that research costs in Scotland would be a similar level, with the remaining costs comprising panel fees and additional secretariat costs to those in place at the moment.

¹² See section 75(2)(b) of the Bill inserting new paragraph 11A(4) of schedule 1 of the Legal Profession and Legal Aid (Scotland) Act 2007

¹³ [LSB Consumer Panel-Annual-Report-2023](#)

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