

Equalities, Human Rights and Civil Justice Committee

23rd Meeting, 2023 (Session 6), Tuesday 14 November 2023

Regulation of Legal Services (Scotland) Bill

Note by the Clerk

Introduction

1. [The Regulation of Legal Services \(Scotland\) Bill](#) (“the Bill”) was introduced in the Parliament by the Cabinet Secretary for Justice and Home Affairs, Angela Constance on 20 April 2023.
2. The Parliament designated the Equalities, Human Rights and Civil Justice Committee as the lead committee for Stage 1 consideration of the Bill and initially agreed a Stage 1 deadline of 15 December 2023.
3. The Bill, accompanying documents and additional information provided by the Scottish Government can be accessed on its [dedicated webpage](#).
4. Also on that page is a [comprehensive briefing](#) on the Bill, prepared by the Scottish Parliament Information Centre (SPICe). The briefing incorporates—
 - a summary which provides background and context to discussions, reviews and consultations that have led up to the introduction of the Bill (page 4);
 - the main changes proposed by the Bill (pages 5 and 6);
 - an overview of legal services, legal service providers in Scotland and the current regulatory framework (pages 10 – 27);
 - background to the Bill (pages 28 – 32);
 - an overview of the main provisions in the Bill (pages 33 – 48);
 - Annexes 1, 2 and 3 provide respectively a diagram of the current regulatory landscape; the landscape proposed in the Robertson report; the landscape as proposed by the Bill.

Written evidence

5. The Committee issued a [call for views](#) on the Bill on 31 May 2023. The call for views closed on 9 August 2023. [Published responses](#) are available online.

6. Key themes highlighted in the responses are:

- Arguments in support of the principal recommendation of the Robertson Review, that an independent regulator should be created to regulate legal professionals
- The interests of consumers and the importance of consumer principles
- A general view that the current complaints system is overly complex and difficult for consumers to navigate
- Strongly expressed concerns in some submissions about provisions in the Bill relating to the role of Scottish Ministers in the regulation of legal services which would impact on the independence of the judiciary.

Stage 1 consideration

7. The Committee considered its approach to scrutiny of the Bill at Stage 1 at its meeting on Tuesday 5 September 2023. It agreed to begin taking oral evidence in early October with further sessions to be held in October and November 2023, and to consider in private the evidence heard during those sessions.
8. The Committee revisited its approach and timetable for evidence sessions at its work programme discussion on 19 September 2023. This followed the lodging of amendments for reconsideration of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (“the UNCRC Bill”).
9. The Committee had previously agreed to prioritise any scrutiny in respect of reconsideration of the UNCRC Bill and, as such, agreed that following its initial evidence session on the Bill (3 October 2023) it would resume taking evidence during November and December 2023.
10. To accommodate this, on 4 October 2023 the Parliament agreed to extend the Stage 1 deadline for the Regulation of Legal Services (Scotland) Bill to 23 February 2024.
11. A Stage 1 timetable is available on the [Bill webpage](#).

Oral evidence

12. On [3 October 2023](#), the Committee took oral evidence on the Bill from witnesses representing consumer-facing bodies. It heard from:
 - Vicky Crichton, Secretariat, Scottish Legal Complaints Commission Consumer Panel;
 - Sharon Horvitz, Legal Director, Competition and Markets Authority;
 - Tracey Reilly, Head of Consumer Markets, Consumer Scotland;
 - Dr Marsha Scott, CEO, Scottish Women’s Aid.

13. At its meeting on 7 November 2023, the Committee took oral evidence from:

- Brian Inkster, CEO, Inksters Solicitors
- Chris Kenny, former Chief Executive of the Legal Services Board of England and Wales and currently CEO of the Medical and Dental Defence Union of Scotland
- Professor Stephen Mayson, University College London
- Naeema Yaqoob Sajid, Solicitor and Director of Diversity+.

14. At this meeting the Committee will hear from:

- Rosemary Agnew, Ombudsman, Scottish Public Services Ombudsman (SPSO)
- Colin Bell, Chair of the Scottish Solicitors' Discipline Tribunal (SSDT)
- Neil Stevenson, Chief Executive, Scottish Legal Complaints Commission (SLCC).

15. Submissions in response to the Call for Views from each of the organisations represented can be accessed on Citizen Space, with links provided in Annexe A to this paper, together with a submission from the Legal Ombudsman who were unable to attend to give oral evidence.

16. At this session, the Committee is likely to explore in more depth key issues such as:

- Witnesses' views on the pros and cons of an independent regulator;
- The proposals in the Bill relating to the role of Scottish Ministers;
- Provisions in the Bill relating to "entity regulation" and use of the title of "lawyer";
- Views on how the Bill intends to liberalise alternative business structures;
- Problems within the current complaints system and whether the Bill seeks to address these effectively; for example, the retained split between service complaints and conduct complaints, and proposals in the Bill relating to the role of the SLCC.

Correspondence with Scottish Government

17. The Minister for Victims and Community Safety [wrote to the Committee](#) on 27 September 2023, indicating her "intention to bring forward amendments to the Bill at stage 2 intended to address the concerns in respect of the role placed on Scottish Ministers within the Bill". The letter is included in Annexe B to this paper.

18. The Committee considered the letter at its meeting on 3 October and agreed to write to the Minister, to better understand the detail of any changes likely to come forward at Stage 2. Accordingly, the [Committee wrote to the Minister](#) on 6 October 2023. The letter is included in Annexe C to this paper.

19. The Minister for Victims and Community Safety [replied to the Committee](#) on 27 October 2023, indicating that the Scottish Government is, for example, “considering amendments which would retain the powers to review a regulator and impose measures (sections 19 and 20), but with responsibility for those functions sitting with the Lord President instead of Scottish Ministers”. Further the Minister indicates the Scottish Government is “exploring amendments which would address the balance of responsibilities between the Scottish Ministers and Lord President in the consideration of applications by bodies wishing to enter the legal services sectors as new regulators (section 29)”. The letter is included in Annexe D to this paper.

Delegated Powers and Law Reform Committee consideration

20. The Delegated Powers and Law Reform (DPLR) Committee has been scrutinising the delegated powers in the Bill.

21. At its meeting on [24 October 2023](#) the DPLR Committee took oral evidence from Esther Robertson, the Law Society of Scotland and the Faculty of Advocates.

22. On [7 November 2023](#) it took oral evidence from the Minister for Victims and Community Safety, where it discussed the implications of any changes to delegated powers provisions which might come forward at Stage 2.

23. Following its evidence session on 7 November the DPLR Committee [wrote to the Lord President](#) of the Court of Session. The letter is included in Annexe E to this paper.

24. The DPLR Committee will report to the Equalities, Human Rights and Civil Justice Committee in advance of this Committee’s scheduled evidence session with the Minister for Victims and Community Safety on 5 December.

Next steps

25. The Committee has extended an invitation to Esther Robertson to give oral evidence at a future meeting and will continue its scrutiny of the Bill at its meeting on 21 November 2023.

Clerks to the Committee November 2023

Annexe A

Written submissions provided by the individuals/organisations represented at this meeting can be accessed online.

- [Scottish Public Services Ombudsman](#)
- [Scottish Solicitors' Discipline Tribunal](#)
- [Scottish Legal Complaints Commission](#)
- [Legal Ombudsman](#)

Annexe B

Letter from the Minister for Victims and Community Safety to the Convener - 27 September 2023

27 September 2023

Dear Convener

Regulation of Legal Services (Scotland) Bill

I write to you in respect of the Regulation of Legal Services (Scotland) Bill (“the Bill”) which will provide for a modern regulatory framework designed to promote competition and innovation while also improving the transparency and accountability of legal services regulation and the legal complaints system in Scotland.

There are many benefits the Bill will bring to both the legal sector and consumers of legal services and we want to ensure it strikes the right balance between the various interests.

Throughout the development of the Bill the Scottish Government has been committed to working collaboratively with all interested parties, including the legal sector and those representing the consumer interest and we will continue to do so during the Bill’s passage through Parliament.

We are aware and have discussed with some stakeholders, including the senior judiciary, their concerns about certain provisions in the Bill relating to the role of Scottish Ministers in the regulation of legal services which they consider could impinge upon the independence of the legal profession¹.

I have considered carefully these concerns and therefore wanted to let the Committee know in advance of it taking oral evidence, that it is my intention to bring forward amendments to the Bill at stage 2 intended to address the concerns in respect of the role placed on Scottish Ministers within the Bill.

I will be happy to update the Committee further when I meet with you later this year.

SIOBHIAN BROWN

¹ In particular, ss. 5, 8, 19, 20, 29, 41 & 49 of the Bill.

Annexe C

Letter from the Deputy Convener to the Minister for Victims and Community Safety - 6 October 2023

6 October 2023

Dear Minister

Regulation of Legal Services (Scotland) Bill

At its meeting on Tuesday 3 October the Equalities, Human Rights and Civil Justice Committee considered your [letter of 27 September](#) in which you indicated your intention to bring forward amendments to the Regulation of Legal Services (Scotland) Bill at stage 2.

The Committee notes the Scottish Government's commitment to working collaboratively with all interested parties, including the legal sector and those representing the consumer interest.

We further note that your intention to bring forward amendments at stage 2 has been informed by discussions you have had with stakeholders, including the senior judiciary, with regard to their concerns about provisions in the Bill which they consider could impinge upon the independence of the legal profession.

The Committee began oral evidence sessions on Tuesday 3 October. These sessions will resume in November and will include sessions with the legal sector and the senior judiciary.

The Committee agreed that, in advance of these sessions, it would be helpful to better understand the detail of any changes likely to come forward at stage 2, to avoid any potential of future evidence sessions covering content and provisions of the Bill that might ultimately not apply.

As such, we would be grateful if you could advise, as far as you are able:

- How far into the development of amendments is the Scottish Government?
- What is the detail and potential effect of such amendments?
- Will the Scottish Government continue to work collaboratively with relevant stakeholders, including the senior judiciary, on such intended amendments?
- Other than those sections identified in the footnote to your letter, are there any other provisions the Scottish Government is considering changing?

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The Committee would welcome a response in writing ideally by no later than Tuesday 31 October, with a view to informing its future evidence sessions.

Yours sincerely,

Maggie Chapman
Deputy Convener
Equalities, Human Rights and Civil Justice Committee

Annexe D

Letter from the Minister for Victims and Community Safety to the Convener – 27 October 2023

27 October 2023

Dear Convener

Regulation of Legal Services (Scotland) Bill

Thank you for the letter of 6 October from the Committee in response to my correspondence of 27 September, in respect of the Regulation of Legal Services (Scotland) Bill.

The Bill will bring many benefits to both the legal sector and consumers of legal services, and we want to ensure it strikes the right balance between the various interests. Therefore, reflecting carefully on the discussions we have had with stakeholders including the senior judiciary, it is my intention to bring forward amendments at Stage 2 intended to address concerns raised in respect of the role placed on Scottish Ministers within the Bill.

To aid the Committee in its consideration of the Bill and in response to the questions in the Committee's letter of the 6 October I have provided further information below.

Question 1: How far into the development of amendments is the Scottish Government?

The Scottish Government is currently considering options for amendments, reflecting on the views of stakeholders including the senior judiciary, and with the intention of building consensus around reform. Whilst we have indicated an intention to make amendments, and are working on their development, we are aware of the importance of the Stage 1 parliamentary process in drawing out stakeholder views, and of the Committee's consideration.

We have had constructive engagement with the senior judiciary and their officials in seeking to build consensus around the best approach to the detailed provisions. The planned changes to the Bill will take time to work through, however I will provide the Committee with an update on developments when I appear before the Committee later this year.

Question 2: What is the detail and potential effect of such amendments?

The provisions identified by the senior judiciary as being of concern are those which introduce new powers and duties in respect of the regulation of legal services, and

place certain functions on Scottish Ministers in their operation². We are considering amendments which would maintain these functions but transfer the responsibility for delivery of certain of those functions to the Lord President as the head of the judiciary. In the consideration of any such changes, we are also seeking to maintain the transparency and accountability which is integral to their operation.

By way of example, we are considering amendments which would retain the powers to review a regulator and impose measures (sections 19 and 20), but with responsibility for those functions sitting with the Lord President instead of Scottish Ministers. The carrying out of such functions would continue to include engagement and consultation with the regulator in question and other appropriate bodies. In addition, there would continue to be a requirement that the report detailing the findings of such a review and any measures intended to be taken, to ensure transparency in the process.

We are also exploring amendments which would address the balance of responsibilities between the Scottish Ministers and Lord President in the consideration of applications by bodies wishing to enter the legal services sectors as new regulators (section 29).

On a number of the delegated powers introduced by the Bill, we are exploring amendments which would narrow their scope so that they are considered at the instance of the sector and provide a consistent approval role for the Lord President throughout the Bill, for example at sections 5, 8, and 49.

These are some of the amendments being explored and I look forward to providing the committee with more detail in due course. While the detail is under consideration, the effect is intended to address the concerns raised by the judiciary in respect of the provisions identified.

Will the Scottish Government continue to work collaboratively with relevant stakeholders, including the senior judiciary, on such intended amendments?

Throughout the development of the Bill the Scottish Government has been committed to working collaboratively with all interested parties, including the legal sector and those representing the consumer interest, and we will continue to do so in the development of amendments and during the Bill's passage through the Scottish Parliament.

Other than those sections identified in the footnote to your letter, are there any other provisions the Scottish Government is considering changing?

As part of our ongoing engagement with stakeholders to consider how the Bill might be strengthened it is anticipated that further amendments will be lodged, by way of technical amendment and amendments intended to further provide proportionate and risk-based improvements to the regulatory framework.

² (In particular, sections 5, 8, 19, 20, 29, 41 & 49 of the Bill).

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We will also carefully consider the findings and conclusions of the Committee. I will be happy to update the Committee further when I meet with you later this year.

SIOBHIAN BROWN

Annexe E

Letter from the Delegated Powers and Law Reform Committee to The Right Hon Lord Carloway, Lord President of the Court of Session – 9 November 2023

9 November 2023

Dear Lord Carloway

Regulation of Legal Services (Scotland) Bill

The Delegated Powers and Law Reform Committee has been scrutinising the delegated powers in the above Bill at Stage 1.

In the course of its scrutiny, the Committee has taken oral evidence from Esther Robertson, the Law Society of Scotland and the Faculty of Advocates on 24 October ([Official Report](#)) and the Minister for Victims and Community Safety on 7 November ([Official Report](#)).

You will see from the Official Reports, that while the Law Society of Scotland and the Faculty of Advocates asked for a number of the powers to be removed in their entirety from the Bill, they suggested others could be amended so as only to be used once the Lord President's consent has been obtained.

The Minister also made a number of commitments, both in her oral evidence to the Committee, and in [this letter to the lead committee](#) to:

- (a) transfer the responsibility for delivery of certain of those functions [regulation-making powers] to the Lord President as the head of the judiciary in relation to a number of the delegated powers; and
- (b) introduce amendments that would require the Lord President's consent to be gained before any changes are made by Scottish Ministers through regulations in relation to other delegated powers.

In their evidence to the Committee, Scottish Government Officials also commented: "As we are altering the delivery of certain provisions so that they move from ministers to the Lord President, our discussions have predominantly taken place with the Lord President's office."

And in direct response to a question asking if "the Lord President is happy with the extension of those powers?", the Committee was told: "Engagement is continuing in respect of those provisions. We hope to reach consensus on the way forward."

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In relation to this Bill, the Delegated Powers and Law Reform Committee seeks your view on the appropriateness of the proposals to involve the Lord President's Office through (a) the proposed transfer of regulation-making powers from Ministers to the Lord President, and (b) the introduction of a consent requirement, which could act as a "veto" over Ministers introducing new measures.

The Committee would appreciate a response in relation to the above question by 3pm on Friday 17 November.

Yours sincerely,

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee