

Scottish Government Response to the Independent Review of Legal Services Regulation in Scotland

June 2019



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Ministerial Foreword



In April 2017 the former Minister for Community Safety and Legal Affairs, Annabelle Ewing, invited Esther Roberton, Chair of NHS 24, to Chair an Independent Review of Legal Services Regulation in Scotland. This was a commitment by the Scottish Government in response to a case for change made by the Law Society of Scotland and others.

Over the following 18 months Esther Roberton, supported by a Review panel made up of legal, consumer and regulation professionals and academics, engaged with a wide-range of stakeholders, including members of the legal profession, regulatory and representative bodies, the third sector and the public, before presenting her report and recommendations to Scottish Ministers. The Chair's Report, ['Fit for the Future – Report of the Independent Review of Legal Services Regulation in Scotland'](#), considered: the public and consumer interest; the interests of the professions and providers; and the interests of the Scottish economy. The Report makes 40 recommendations aimed at reforming and modernising the existing legal services regulatory framework, to provide a proportionate approach to regulation whilst supporting growth and competitive provision within the legal services sector, and placing consumer interests at its heart.

In making these recommendations, the report was clear that Scotland is home to a well-educated and well respected legal profession with a high degree of public trust.

In considering this Report I have met with a number of stakeholders, each with a keen interest in the Report and its recommendations. One area where there is broad agreement is around the need to make improvements to the current framework for complaints and redress in respect of legal services. I believe reform is required to ensure consumers and legal professionals alike are treated fairly in an efficient and transparent system. It is apparent to me however that overall there is little consensus on the extent to which wider reform is required, and how the structure of the complaints and redress process should be administered and formed.

With this in mind the Scottish Government is working with the Law Society of Scotland, the Faculty of Advocates and the Scottish Legal Complaints Commission to attempt to identify improvements to the complaints process that may be made in the interim.

Views are much more polarised in respect of the primary recommendation of the Report, to establish an independent body, responsible for the regulation of all legal professionals in Scotland, and the implications this may have on the existing landscape.

I am clear that any new system of regulation should incorporate the competitive provision of legal services, the public and consumer interest; and the promotion of a flourishing legal sector in Scotland; whilst encompassing the Rule of Law. The Scottish Government will seek to build consensus, where possible, on the way forward prior to deciding on a course of action.

In the long term, the Report provides us with an opportunity to develop a new statutory framework for a modern, forward-looking legal service regulatory system for Scotland. I will issue a public consultation that will inform the design of that new framework, and the extent of its reform subject to the responses, with a view to introducing a legal services Bill to Parliament to bring about necessary changes to primary legislation.

I would like to record my thanks to Esther Robertson for her Report. Her achievement was aided by a strong Review panel which both informed and challenged her, as well as the many stakeholders who met with and wrote to the Review.

This paper sets out the Scottish Government's response to *Fit for the Future – Report of the Independent Review of Legal Services Regulation in Scotland* and confirms our commitment to a modern and effective framework of legal services regulation.

A handwritten signature in black ink, appearing to read 'Ash Denham', written in a cursive style.

Ash Denham

Minister for Community Safety

Introduction

Since the publication of *Fit for the Future – Report of the Independent Review of Legal Services Regulation in Scotland* in October 2018, the Scottish Government has given careful consideration to the contents of the Report. It was vital to have a sense of the wider reaction to the Report and conduct informal engagement with key stakeholders to discuss its findings and recommendations. This initial engagement has helped to identify those aspects of the Report stakeholders were most interested in, and that time with stakeholders has been very helpful and appreciated.

The discussions during this engagement did chime with the Report, in that there is a widely held view that the current legal complaints and redress process does not serve consumers and the legal profession as well as it might. Therefore this is an area in which the Scottish Government would aim to bring about improvement as a priority.

From our analysis of the Report it is clear that the drivers of the Chair's recommendations were based on the Better Regulation principles as set out in the Regulatory Reform (Scotland) Act 2014:

- Proportionality
- Consistency
- Accountability
- Transparency
- Targeted

However also considered:

- Independence
- Prevention and improvement
- Cost
- Efficiency

That analysis has shown a broad consensus that the complaints system is in need of reform, similarly, that there is widespread support and strong arguments in favour of a number of regulatory measures such as:

- The introduction of entity regulation and ability of Scottish legal firms to seek outside investment.
- Developing a clear modern definition of legal services to be set out in legislation.
- Protection of the title 'Lawyer'

However, before any such reforms may be undertaken, the primary recommendation of this Report must be addressed, in order to set the context for who will take forward such actions, and how they will do so. The Scottish Government is open to views on how best to deliver the longer term aims set out within the remit of the Review and will consider other means of delivering the improvements the Chair sought along with the primary recommendation of the Report, and so will issue a public consultation to

help inform the future direction of reforms. However, this response signals the Scottish Government's willingness to take forward supported recommendations that will deliver an enhanced system of legal services regulation in Scotland.

Case for change

The Report asks the question, is there a case for strategic change? It goes on to set out the changes that the Scottish legal sector has undergone in recent years and lays out views from the professional, regulatory and consumer perspective who believe that the regulatory model should be more flexible, proportionate and modernised to ensure that it is fit for the future. The Report agrees with these views and goes on to recommend that the model of regulation should be based on Better Regulation principles outlined by the Regulatory Reform (Scotland) Act 2014. The Scottish Government seeks to build consensus on the way forward with regard to the future of the regulatory framework prior to taking forward legislative change.

Economic and social contribution of legal services

The Report also considered how to promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector.

The legal sector contributes over £1 billion to the Scottish economy each year and is responsible for over 20,000 high value jobs. It is not only an economic generator in its own right but a profession that is critical to Scotland's other key sectors - Financial Services, Oil and Gas, Renewables, Science and Technology.

The Scottish Government is working in partnership with Scottish Development International and the Law Society of Scotland to promote Scottish Legal International. This is an initiative developed by the leading commercial firms in Scotland whose aim is to raise the profile of Scots law and the Scottish legal system to an international audience, to seek opportunities for inward investment in legal services in Scotland, and to encourage Scottish firms to export their services to a global audience.

The work of Scottish Legal International along with the other strands of work underway, will allow us to bring to bear the unique Scottish legal system and contribute to the global effort among international partners to tackle dynamic threats such as those in cyberspace that can impact on Scotland's citizens, its businesses and its public services.

Scottish Ministers have regular and ongoing dialogue with Ministers across the UK and within Europe to emphasise the importance we place on our relationship and the determination that it will endure despite the challenges which Brexit presents.

This work to strengthen our external relationships will be supported by Scotland Is Now, a shared collaboration between the Scottish Government and partner agencies to market Scotland to the world as the best place to live, work, study, visit and do business in.

The role of legal services are also central to the protection of human rights and freedoms, they play a vital role in upholding the rule of law and providing access to justice.

Legal services contribute to the social value of Scotland, there is significant diversity in the types of legal services people access, often individuals require such service in times of distress or vulnerability, many will interact with legal services when buying a home, which may be a stressful experience for some. There are also a range of commercial matters supported by legal services, from the small business to the multi-national corporation.

Legal services support individual's wellbeing, promote their continued contribution to society, and help to prevent the escalation of problems. Legal services align with the Scottish Government National Performance Framework outcomes in the following ways:

- We live in communities that are inclusive, empowered, resilient and safe
- We respect, protect and fulfil human rights and live free from discrimination
- We are a society which treats all our people with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way
- We tackle poverty by sharing opportunities, wealth and power more equally
- We have thriving and innovative businesses, with quality jobs and fair work for everyone

They also align with the outcomes set out in the Justice for Scotland: Vision and Priorities document (2017):

- We live in safe, cohesive and resilient communities
- Prevention and early intervention improve wellbeing and life chances
- Our system and interventions are proportionate, fair and effective
- We deliver person-centred, modern and affordable public services

Next steps

The Scottish Government is working with the Law Society of Scotland, the Faculty of Advocates and the Scottish Legal Complaints Commission to identify and consider improvements that may be made to the legal complaints system in the interim without the requirement for primary legislative change.

We will publish a public consultation to seek to build consensus on the way forward with regard to the future of the legal services regulatory framework for Scotland, this will include a range of options. That will be used to develop primary legislation for introduction to the Scottish Parliament.

In moving this work forward it will be critical to have the constructive engagement of stakeholders; and the Scottish Government is committed to working in partnership to deliver proposals for a reformed legal services regulatory framework in Scotland. The time given by stakeholders is very valuable and greatly appreciated and we look forward to continuing that work over the coming months and beyond.



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