

Regulation of Legal Services (Scotland) Bill

Business and Regulatory Impact Assessment

May 2023

Title of Proposal: Regulation of Legal Services (Scotland) Bill

Purpose and Intended Effect

1. Background

- 1.1. In December 2015, the Law Society of Scotland (“Law Society”) set out proposals that would deliver reforms to their regulatory powers in order to support growth in the legal services sector, through a more modern and proportionate approach to regulation, and to strengthen consumer protection.
- 1.2. The following year, the Scottish Legal Complaints Commission (“SLCC”) published a paper setting out its priorities for reform¹. The SLCC raised concerns that the statute underpinning the legal complaints system is too restrictive and unable to act in a proportionate and risk-based way, adding undue cost and time for consumers and legal professionals.
- 1.3. To further develop views on potential reforms, the Scottish Government established an independent review of the regulation of legal services which was taken forward by an independent panel chaired by Esther Robertson with the following remit:
 - to consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector;
 - to recommend a framework which will protect the public and consumer interest, promote the principles of accountability, consistency, flexibility, transparency, cost-effectiveness and proportionality;
 - to ensure that the regulatory framework retains the confidence of the profession and the general public;
 - to undertake specific research into the extent of the unregulated legal services market in Scotland and investigate any impacts on consumers, as well as developing a better understanding of the structure of the legal services market.
- 1.4. ‘Fit for the Future – the Report of the Independent Review of Legal Services Regulation in Scotland’ was published in October 2018. The ‘Robertson report’ made 40 recommendations intended to reform and modernise the current regulatory framework to ensure a proportionate approach, supporting growth and competitive provision in the legal services sector, whilst placing consumer interests at its heart.

¹ [reimagine-regulation-slcc-priorities-for-a-consultation-on-legal-services-regulation-v100.pdf](https://www.scottishlegalcomplaints.org.uk/reimagine-regulation-slcc-priorities-for-a-consultation-on-legal-services-regulation-v100.pdf)
([scottishlegalcomplaints.org.uk](https://www.scottishlegalcomplaints.org.uk))

- 1.5. The Robertson report took the view that the current framework of legal services regulation operating in Scotland is dated and in need of reform to ensure that it is fit for the 21st Century. The report also accepted that the legal complaints system could be improved, and the legislative structure streamlined.
- 1.6. The Chair of the review set out early in the report that the recommendations contained in the report were hers, and that although all of the panel members agreed with some of the recommendations, some members did not agree with all recommendations. A minority of panel members expressed significant disagreement with the primary recommendation:

“There should be a single regulator for all providers of legal services in Scotland. It should be independent of both government and those it regulates. It should be responsible for the whole system of regulation including entry, standards and monitoring, complaints and redress. Regulation should cover individuals, entities and activities and the single regulator should be a body accountable to the Scottish Parliament and subject to scrutiny by Audit Scotland.”
- 1.7. The Scottish Government response to the Robertson report was published in June 2019². The analysis of the Robertson report established that while many of the recommendations were widely supported, the primary recommendation largely polarised the views of those in the legal and consumer landscape. As a result, the Scottish Government made the commitment to issue a public consultation based on the recommendations made by the Robertson report, with the intention of seeking to build consensus on the way forward.

2. Objective

- 2.1. The overarching policy objective of this Bill is to provide a modern, forward-looking legal services regulation framework for Scotland that will best promote competition, innovation, and the public and consumer interest in an efficient, effective, and independent legal sector. The Bill will implement a number of key recommendations from the Robertson report.
- 2.2. This Bill delivers the Programme for Government commitment to reform legal services regulation and introduces a number of measures designed to promote competition and innovation in the legal sector while improving the transparency and accountability of legal services regulation and the legal complaints system in Scotland.
- 2.3. The Bill made up of five parts as follows:

Part 1 deals with the overarching regulatory framework and breaks down into three chapters—

- Chapter 1 sets regulatory objectives and professional principles for the regulation and operation of legal services,

² [Independent review of legal services regulation in Scotland: our response - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/consultations/2019/06/190619)

- Chapter 2 divides regulators into two categories and imposes different conditions based on the category to which a regulator is assigned,
- Chapter 3 provides for new regulators to enter the market and their members to acquire rights to provide legal services.

Part 2 introduces a requirement for category 1 regulators (at present just the Law Society) to create and apply a set of rules for the regulation of legal businesses.

Part 3 reconstitutes the SLCC as the Scottish Legal Services Commission, adjusts its powers and provides for an updated complaints regime.

Part 4 makes provision in relation to a range of other matters, including—

- changing the ownership requirements for licensed legal services providers (sometimes referred to as alternative business structures) and adjusting the restrictions on their businesses,
- removing certain restrictions on charities and third sector organisations in relation to providing legal services,
- creating a range of offences in connection with people wrongly using the title of ‘lawyer’ or using particular titles, etc. that would infer that they are regulated in a certain way,
- conferring power on the Scottish Ministers to require more (or fewer) legal services to be provided only by regulated persons.

Part 5 deals with a number of general matters.

2.4. Key measures in the Bill include:

2.5. Implementing 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.

2.6. Introducing a modern set of regulatory objectives and professional principles, while incorporating key aspects of the Better Regulation, the Consumer Principles and the Human Rights (PANEL) Principles³. The Better Regulation principles aim to ensure that regulation is effective, proportionate, transparent, and based on evidence. The purpose of the Better Regulation Principles is to improve regulatory outcomes by reducing unnecessary burdens and costs associated with regulation while maintaining necessary safeguards. The purpose of the Consumer Principles are to protect and advocate for the rights of consumers. These principles aim to ensure that consumers have access to

³ There is crossover between the Better Regulation, Consumer, and Human Rights principles.

accurate information, are treated fairly and transparently, that they understand their rights and can access effective redress where appropriate, placing consumer interests at the heart of regulation.

- 2.7. Allowing the Scottish Ministers to investigate and, if necessary, take certain measures in the event of failure by legal services regulators to regulate in the public interest or meet the regulatory objectives⁴.
- 2.8. Allowing for greater flexibility in respect of alternative business structures, by removing restrictions which currently require licensed legal services providers to operate for 'fee, gain or reward', and which require a minimum ownership of 51% by regulated professionals. Instead, regulated professionals would require to have at least a 10% stake in the total ownership or control of the entity. This will allow greater flexibility to address concerns that Scottish legal firms are at a competitive disadvantage compared to other jurisdictions.
- 2.9. Introducing regulation of a legal firm as a whole, rather than solely at individual professional level as is predominantly the case.
- 2.10. Allowing for protection of the use of the title 'lawyer', to address concerns that unqualified persons, or persons who have been struck off, can currently use the term to describe themselves when providing legal services to the public for money.
- 2.11. Enabling risk-based and proportionate regulation of the use of LegalTech, by allowing regulators to grant waivers of targeted rules, in order to facilitate the use of regulatory sandboxes⁵ to promote innovation under regulatory scrutiny.
- 2.12. Reforming the legal complaints system, to address concerns that the statute underpinning it is too restrictive and prevents complaints from being dealt with in a proportionate and risk-based way, adding undue cost and time to the legal complaints process for consumers and legal professionals. The Bill reconstitutes the SLCC as the Scottish Legal Services Commission ("the Commission") and provides it with an expanded independent oversight role of complaint handling by the regulated sector, in addition to a new role in overseeing complaints about unregulated legal services.

3. Rationale for Government intervention

- 3.1. The Robertson 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 legal services whereby consumers either receive or perceive that

⁴ Measures would range from censure (public criticism) to continued scrutiny to financial penalty. In adhering to precedent set by the Legal Services (Scotland) Act 2010, the Lord President's approval would be required for sanctions other than a financial penalty.

⁵ A regulatory sandbox is a regulatory approach that allows live, time-bound testing of innovations under a regulator's oversight. Novel financial products, technologies, and business models can be tested under a set of rules, supervision requirements, and appropriate safeguards.

they have received a poor service⁶. 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.

- 3.2. In addition, the Robertson report identified the absence of a comprehensive baseline survey of consumers of legal services in Scotland. However, these conditions are not unique to the legal services sector and other industries, for example the medical and financial sectors, also have to overcome many of the same challenges. While these conditions have the potential to lead to a number of poor outcomes for consumers, which can damage the quality of the services they receive and/or increase the costs of those services, effective regulation can guard against these and protect consumer interests.
- 3.3. The role of legal services are central to the protection of human rights and freedoms, playing a vital role in upholding the rule of law and providing access to justice.
- 3.4. 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 an 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.
- 3.5. In this regard, the Legal Services (Scotland) Act 2010 “(the 2010 Act”) sets out a regulatory objective of “protecting and promoting the public interest”⁷. The public interest means ‘objectives and actions for the collective benefit and good of current and future citizens in achieving and maintaining those fundamentals of society that are regarded by them as essential to their common security and well-being, and to their legitimate participation in society. There must be a public interest in ensuring that the basic needs of all citizens are satisfied’⁸.

⁶ 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.

⁷ [Section 1 of the Legal Services \(Scotland\) Act 2010](#).

⁸ [Mayson, Legal services regulation and the public interest](#)

- 3.6. Effective and proportionate regulation has an important role to play in ensuring that the legal profession in Scotland continues to be regarded as one of the best in the world and is able to grow and thrive, to meet the needs of Scotland's citizens.
- 3.7. 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.
- 3.8. Reform of legal services regulation will seek to modernise the existing regulatory framework and provide a proportionate approach which supports growth and competitive provision in the legal services sector whilst placing consumer interests firmly at its heart, aligning with the principles of the Robertson report. This also links with the following Scottish Government National Performance Framework outcomes⁹:
- We grow up loved, safe and respected so that they realise their full potential.
 - We live in communities that are inclusive, empowered, resilient and safe.
 - We are creative and their vibrant and diverse cultures are expressed and enjoyed widely.
 - We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
 - We are well educated, skilled and able to contribute to society.
 - We have thriving and innovative businesses, with quality jobs and fair work for everyone.
 - We respect, protect and fulfil human rights and live free from discrimination.
 - We are open, connected and make a positive contribution internationally.
 - We tackle poverty by sharing opportunities, wealth and power more equally.
- 3.9. Reform of legal services regulation also aligns with the aims set out in The Vision for Justice in Scotland document (2022)¹⁰, which sets out Justice Priorities for this parliamentary session:

⁹ National Performance Framework | National Performance Framework

¹⁰ [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/vision-for-justice-in-scotland-2022/pages/11-to-15.aspx)

- We have a society in which people feel, and are, safer in their communities.
- We have effective, modern person-centred and trauma-informed approaches to justice in which everyone can have trust, including as victims, those accused of crimes and as individuals in civil disputes.
- We address the on-going impact of the COVID-19 pandemic and continue to renew and transform justice.

3.10. 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. Both the legal services sector and the Scottish Government are working together to ensure the sector makes its maximum possible impact in a competitive global market.

4. Consultation

- 4.1. The Scottish Government response to the Robertson report recognised the differing views to the report's primary recommendation, and the implications this may have on the existing legal landscape in Scotland.
- 4.2. Our response set out that we would seek to find common ground and agreement on the Robertson report's recommendations where possible. The Scottish Government has worked collaboratively with a wide range of stakeholders in the form of a working group to build consensus around issues for consultation.
- 4.3. A number of bodies and organisations were engaged in the development of the consultation 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 Consumer Panel

- 4.4. There has been extensive consultation and engagement with key stakeholders, alongside the public consultation exercise. Our consideration of the Robertson report recommendations has been based on this stakeholder and public engagement.
- 4.5. A number of Scottish Government departments, non-departmental public 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:
- Civil Law and Legal System Division (Scottish Government) on the impact of proposals.
 - Justice Analytical Services Division (Scottish Government) for modelling, evidence and analysis surrounding proposals.
 - Scottish Government Legal Directorate (Scottish Government) on legal basis for legislation.
 - The Judiciary
 - The CMA
 - Financial Conduct Authority (FCA)
- 4.6. The Scottish Government worked collaboratively with stakeholders from the legal and the consumer perspective to design the consultation. In seeking to build agreement around proposals for reform the consultation contained two alternative viable models of regulation.
- 4.7. 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

5. The engagement strategy was designed to raise awareness and encourage participation in the consultation. This included asking stakeholders to share the consultation. A summary consultation accompanied the main consultation to allow stakeholders without detailed knowledge to share their views and priorities for reform. In addition to a number of virtual focus groups engaged with existing stakeholder networks.

Focus Groups

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. We initially set out specific dates, and then adopted a more flexible approach to support stakeholders to join.

7. Eight focus groups took place, however no pre-existing number was set and had there been further interest we would have sought to accommodate. 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:

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 for those who wished to. A background section offered to provide context for less accustomed readers.

Business

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.

10. Consultation Analysis

11. The independent consultation analysis was published on 8 July 2022. A total of 158 substantive responses were included in the data analysis. Overall, 101 individuals and 57 organisations responded to the written consultation. In addition, views from the focus groups were included in the analysis.

11.1. Organisational responses were coded by sector, with 47 (82%) identified as representing the legal services profession, and 10 (18%) represented consumers. The number of respondents by organisational sector is outlined in the table below (note: this has not been disaggregated by profession/consumer categorisation due to the small numbers in some categories which might risk identifying respondents).

11.2. The analysis of the consultation responses shows that views were evenly split between support and opposition to the primary recommendation. However, there are many areas where there is broad agreement between stakeholders.

Organisational Sector

Number	Percent	
Legal services provider	29	51%
Professional body	13	23%
Public body/sector	6	11%
Consumer body/panel	3	5%
Third sector	2	3%
Legal services regulatory body	1	2%
Other	3	5%
Total	57	100%

- 11.3. The analysis highlighted that all respondents, regardless of affiliation, shared as a common aspiration, the need for any future model to be transparent, open to public scrutiny and efficient to ensure that justice remains accessible to all.

Consultation responses to specific Bill proposals

The Regulatory Objectives and Professional Principles

- 11.4. The consultation found majority support for a modern set of regulatory objectives and professional principles. 99% of respondents agreed the regulatory objectives should include one to support the rule of law and the proper administration of justice, 97% of respondents agreed that regulation should offer accountability in protecting the public and consumer interest. 88% of respondents supported the proposal to embed the Better Regulation and Consumer Principles throughout the regulatory framework. 90% of respondents supported embedding a modern culture of prevention, quality assurance and compliance throughout the framework. 79% agree the objectives should promote innovation, diversity and competition in the provision of legal services.

The Legal Services Regulatory Framework

- 11.5. In respect of those who provided a rating to indicate their level of agreement with the primary recommendation, responses were fairly evenly split between those who agreed (49%) and those who disagreed (51%). However, those who were opposed to the recommendation were slightly more likely to strongly disagree, compared to those who strongly agreed.
- 11.6. The consultation showed strong support for retaining the overarching role of the Lord President and the Court of Session, with the majority of respondents stressing that their role in the regulatory framework was important in safeguarding the independence of the legal profession.

Standards, Monitoring & Reporting

- 11.7. 97% of respondents to the consultation agreed that legal services regulation should offer accountability in protecting the public and consumer interest. The new provisions in the Bill build upon the current position in respect of licensed legal services providers, in which Scottish Ministers may monitor the performance of approved regulators. The approach in the Bill builds on the model of co-regulation and seeks to provide an appropriate mechanism to make improvements should they be required. The measures incorporate appropriate safeguards which protect the independence of the legal profession while reinforcing the duty to operate in the public interest.

Definition of Legal Services / Reserved Activity

- 11.8. Most respondents agreed that there should be a definition of legal services (88%), and that this definition should be set out in primary legislation (82%). It was felt this would provide greater clarity, transparency, accountability, and consumer protection. Around three-quarters of respondents (76%) agreed that there should be no substantial change at this stage to bring more activities within the scope of those activities 'reserved' to solicitors or to remove activities. Similarly, just under three-quarters (72%) agreed that it should be for the regulator(s) to propose to the Scottish Government which activities to reserve to legal professionals in the future and which should be regulated.
- 11.9. Respondents tended to agree that there was no need for more activities to be 'reserved' to solicitors. Some feared changing the activities currently noted as reserved would impact on the third and not-for-profit sectors, restrict access to justice for those who cannot afford a solicitor, and restrict consumer choice.

Alternative Business Structures

- 11.10. There was a clear divergence of views for this proposal. Of those who indicated their level of agreement to removing regulated professional ownership requirements, just over half (52%) agreed that the 51% majority stake rule for licensed providers should be removed, compared to 48% who disagreed. Some respondents drew comparisons between Scotland and other countries, claiming significant evidence of success via ABS. The Bill seeks to liberalise licensed providers by removing restrictions which currently require such firms to operate for 'fee, gain or reward', and to have a minimum ownership of 51% by regulated professionals. Instead, regulated professionals would require to have at least a 10% stake in the total ownership or control of the entity. This will allow greater flexibility to address concerns that Scottish legal firms are at a competitive disadvantage compared to other jurisdictions. The proposed approach seeks to balance the interests of those who support retaining a requirement for regulated professionals to have a majority ownership in licenced providers, and those who seek the requirement removed. The intention is to remove barriers to competition and promote access to justice.

Rights For New Regulators to Provide Legal Services

- 11.11. 79% of respondents to the consultation supported promoting innovation, diversity and competition in the provision of legal services. In respect of the question on fitness to practice, the consultation analysis reported a view by some that the diploma is a barrier to entry and should be removed or alternative routes should be provided (as entry into the profession via diploma was considered to be too high and too costly). This provision could provide a mechanism for a body which adopts an apprentice-style approach to legal qualification to apply for rights of audience and rights to litigate. For example, in England and Wales the Chartered Institute of Legal Executives provides a route for its members to practice law through an apprenticeship.
- 11.12. Chapter 3 of Part 1 of the Bill provides for new regulators to enter the market and for their members to acquire rights to provide legal services. While much of this is a restatement of material from the 1990 Act, the rights to provide legal services are broader.

Regulation of Legal Businesses

- 11.13. The majority of respondents (80%) agreed that 'entity regulation' should be introduced. This is the regulation of, for example, law firms as a business rather than solely regulating the solicitors within the law firm on an individual level. This was predominantly for consumer protection given that consumer expectations of legal services are that such services emanate from a 'firm' (or entity) rather than from an individual solicitor.

Protection of Professional Titles

- 11.14. The CMA view that professional titles have the potential to affect consumer decision-making, and consumers may choose to rely on such titles when navigating the market as an indicator of quality. The CMA advise that although professional titles can be a useful and practical way to provide consumers with an indication of at least a minimum level of quality, title regulation may limit the scope for competition (and therefore affordability) if it results in consumers avoiding unregulated providers completely.
- 11.15. However, in contrast 72% of respondents agreed that there should be a change to allow the title 'lawyer' to be given the same protection as 'solicitor'. This was considered important to protect the consumer, who may not understand the distinction between the two titles. Similarly, over two-thirds of respondents (70%) agreed that the title 'advocate' should have the same protections as 'solicitor'. However, protecting this title was seen as more challenging and risked creating unintended consequences due to the use of advocate roles in other sectors (e.g. social work, mental health, and the third sector), as well as the more general use of the term 'advocate' in the English language (e.g. to advocate/support an issue).

Legal Tech

11.16. There was less agreement around whether the Scottish regulatory framework should allow for the use of regulatory sandboxes to promote innovation – 56% agreed it should. While this approach may support innovation, it was felt important that measures and safeguards be put in place to ensure it was fit for purpose. Indeed, the key concerns among those against the use of sandboxes were that it could leave the legal system open to abuse, that unregulated providers may be unreliable/cause public harm, and that consumers should be protected against any ‘testing’ on live cases.

Compensation Funds and Professional Indemnity Insurance

11.17. Over three quarters of respondents (79%) agreed that the Client Protection Fund (the Law Society’s compensation fund) worked well. While many suggested that no changes were required to this, others did offer suggestions, including: moving the management of the fund to an independent body; that greater transparency was needed and the fund should have similar considerations to those of the Master Policy professional indemnity arrangements; tightening the limit of an award to remain at £1 million per claim; for awards to be increased; speeding up the administration of rewards and that the 1980 Act was too restrictive on awarding consumers monetary losses, with a need for greater flexibility in the legislation whilst moving to limit numbers of claims so as not to exhaust the fund.

The Legal Complaints System

11.18. The consultation analysis shows that most respondents (87%) agreed that the single gateway for all legal complaints should be retained. It was argued that a single gateway for all legal complaints is efficient, brings clarity and transparency to the process for both the profession and consumers, and makes access simpler for consumers.

11.19. Several respondents from the legal profession, including the Law Society and those who supported their response, also suggested that, in addition to a consumer complaints process, there would be merit in facilitating the regulator or professional bodies to refer matters for investigation themselves, and for these to be facilitated in an efficient and timely manner.

11.20. 70% of respondents agreed that the professional regulatory bodies should maintain a role in conduct complaint handling, where a complaint is generated by an external complainer. The key reasons given included: to uphold the reputation and standards of the profession as well as providing reassurances to the public; they were best placed to assess such issues due to having direct experience of this aspect of the profession and to maintain the independence of the profession.

11.21. The consultation analysis shows that most respondents (86%) agreed that there should be a level of redress for all legal complaints, regardless of regulatory activity. Some organisations felt that consumers would be unlikely to know which areas were regulated and would expect that the complaints and redress process would be applicable for all issues, therefore the system needed to take account of this.

11.22. 79% of respondents viewed that the appeals process for legal complaints should be simplified, with no ability to appeal to the Court of Session, except in the most serious cases.

12. Options

Option 0.1: 'Do nothing'

12.1. The policy impact of this option is likely to be:

- The current framework of legal services regulation operating in Scotland would remain dated and would not best serve the legal sector or consumers.
- The extent of alternative business structures would remain limited, restricting the sector's ability to seek outside investment.
- An inability to introduce regulation of legal services at the legal business level.
- A failure to protect consumers and reflect consumer understanding by restricting the use of the title 'lawyer' to those who are regulated in certain circumstances.
- The framework would be limited in the respect of the use of regulatory sandboxes.
- The legal complaints system would remain unaltered, the statute underpinning the legal complaints system would remain too restrictive and complaints against unregulated legal services providers would remain outwith the scope of the legal complaints system.
- Charities would remain unable to directly employ legal practitioners to carry out certain activities.

Option 1: Robertson Model

12.2. This model is the primary recommendation of the Robertson report. All legal professionals would be regulated by a single independent body which would be accountable to the Scottish Parliament and subject to scrutiny by Audit Scotland. All complaints relating to legal professionals would be handled by that body, replacing the role of the SLCC and current regulators. That new body would be funded through a levy on those it regulated, i.e. the legal

profession. The cost to the profession would be intended to be no more than the current system.

- 12.3. Current regulators, the Law Society, the Faculty and the ACA, would no longer have regulatory roles. Instead, they would be invited to work with the new independent regulator as professional organisations.

Benefits

- 12.4. A single independent regulator would provide for the separation of regulation from the legal profession, representative bodies, and government. This would avoid the risk that regulatory decision-making may be compromised by the potentially opposing interests of the profession. This model is seen by proponents as the best way to ensure that regulation can protect consumer interests and wider public interests. By promoting competition among providers, it can lead to improved choice and innovation through consistent, better regulation principles, including the clear objectives and accountability that underpin best practice in regulation.

Costs

- 12.5. There may be a risk of loss of experience in the regulatory structure. A loss of voluntary input that currently exists may result in insufficient attention being paid to sector-specific differences and experiences of the different branches of the legal profession.
- 12.6. The potential for a reduction in the cost duplication of functions (i.e. multiple legal services regulators administering separate legal complaint systems for each branch of the legal profession) may balance the cost of the loss of the professional voluntary contribution. This potential to reduce duplicative administrative and support functions if regulation was overseen by a single body (office accommodation, HR, finance, case management systems, IT, etc.), however this may be offset by loss of a voluntary contribution to regulatory functions. An initial set up cost may be estimated in the region of >£3m.
- 12.7. This option is viewed by some stakeholders as a threat to the independence of the legal profession and the rule of law.

Option 2: Market Regulator Model

- 12.8. This is the second of three options put forward at the public consultation. A new independent market regulator would be created which would have oversight of the current regulators. It would be accountable to the Scottish Parliament. The current regulators would keep many of their current responsibilities, they would be required to host an independent statutory regulatory committee which would be accountable to the market regulator. The market regulator would then be responsible for authorising each

regulators' responsibilities. The SLCC would continue to handle complaints under a reformed system.

- 12.9. The market regulator, current regulators and SLCC would be funded through a levy on those regulated – the legal profession – with the cost intended to be no more than the current system. The potential for a reduction in the cost of the complaints system may balance the cost of this new regulator. The SLCC is funded by a levy paid by legal professionals operating in Scotland. The SLCC budget is based on trends in legal complaints. The trends in legal complaints demonstrate that the majority of legal complaints relate to services, the most common complaint being about communication. This suggests that a greater focus on continuous improvement and prevention of failure, based on trends in the types of legal complaints raised, may have the potential to inform better practices that are designed to better serve consumers of legal services and reduce the number of complaints raised. The current more restrictive complaints system is not only less efficient but more expensive to the legal profession and consumers, a more flexible approach is anticipated to reduce costs.

Benefits

- 12.10. The introduction of a market regulator may retain the aspects of the current framework that work well, whilst incorporating accountability through independent transparent oversight.

Costs

- 12.11. The finite resources available to a market regulator in a jurisdiction the size of Scotland may bring a focus on market forces and competition at the expense of wider public and societal benefits. It may be the case that the principles and practice of economic regulation and market-based consumerism are given precedence over more nuanced issues of the public interest and the value of professionalism. New regulatory costs may risk raising prices for consumers and could weaken the competitiveness of Scotland's legal firms. Any option that removes functions from or dilutes the functions of the Lord President and Court of Session will be similarly be viewed as a risk to the independence of the legal profession by some.
- 12.12. Option 2 is the only model that may add an additional body to the regularly framework. The Legal Services Board in England & Wales provides some indication of the likely ongoing costs, applying a population share to this would give a figure of around £382,000 per annum in Scotland. A set up cost of around >£1.5m is estimated.

Option 3: Enhanced Accountability and Transparency Model

- 12.13. This was the third option put forward at the public consultation. No new organisation would be created. Instead, each of the current regulators would host an independent statutory regulatory committee which would be

accountable to the Scottish Parliament or the Lord President. The SLCC would continue to handle complaints under a reformed system. The regulators and the SLCC would be funded through a levy on those regulated, i.e. the legal profession, with the cost intended to be no more than the current system.

Benefits

12.14. The enhanced accountability and transparency model may retain the advantages of the current framework that work well. It would retain the voluntary contribution, and relevant knowledge and experience of the current framework. Retaining the roles of the Lord President and Court of Session without dilution would retain checks and balances viewed by the legal profession as appropriate.

Costs

12.15. The model may however be seen through the public perception as the profession retaining this framework through self-interest, the framework may not then gain the potential benefits that arise from regulatory independence and consumer perspectives. This model may retain the greatest potential risk that regulatory decision-making may be compromised by the potentially opposing interests of the profession. A set up cost of around >£0.5m to £1m< is estimated.

Option 4: Introduce the measures within the Regulation of Legal Services (Scotland) Bill

12.16. The Bill seeks to take a proportionate approach to the reform of legal services regulation, balancing and delivering the key priorities of stakeholders.

12.17. Firstly, the Bill will implement a modern, forward-looking model for legal services regulation which will build on the existing 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 proportionate and risk-based accountability within regulatory approaches.

12.18. Secondly, the Bill will reform legal services regulation in key areas. It will introduce greater protections to consumers of legal services, particularly through regulation at legal business level and protection of legal professional titles. The Bill will reduce restrictions in respect of alternative business structures to encourage competition and innovation in the legal sector and support Scottish legal firms, to place them on an equal footing with counterparts within the UK and other jurisdictions. The Bill will provide a risk-based and proportionate system for legal complaints which will benefit legal professionals and consumers alike. 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.

Benefits

- 12.19. The Bill is shaped by the consultation analysis and seeks to capture benefits of the various options above.
- 12.20. The Bill retains the advantages of the current framework that work well, while placing additional statutory duties on the existing regulators in respect of increasing transparency and accountability, strengthening the system of co-regulation.
- 12.21. The Bill provides for mechanisms for intervention should the regulators fail to regulate in the public interest or comply with the regulatory objectives.
- 12.22. The roles of the Lord President and Court of Session continue to provide for appropriate checks and balances safeguarding the independence of the legal profession.

Costs

- 12.23. The global cost of the regulatory fund is estimated to remain around current levels.
- 12.24. Initial set up costs associated with this option are estimated at around £645,000 (these are explored within the Financial Memorandum in greater detail).

13. Sectors and Groups Affected

- 13.1. The legislation will affect organisations involved in the Scottish legal services framework alongside consumer groups such as: the Law Society, the Faculty, the ACA, the SLCC, the CMA, Which?, CAS, Consumer Scotland, the SLCC's Consumer Panel. It will affect legal firms which will become subject to regulation as authorised legal businesses (entity regulation), and unregulated legal services providers who will become subject to the legal complaints system. The general public will also be affected by changes made to legislation, particularly in relation to making a complaint against a solicitor or law firm.

Sectors and groups affected by specific Bill proposals

The Regulatory Objectives and Professional Principles

- 13.2. The regulators of legal services must exercise their regulatory functions in a manner which is compatible with the regulatory objectives and the Bill provides for measures which may be taken by the Scottish Ministers in the event that a regulator fails in that regard. The Bill also introduces a duty for authorised legal businesses to adhere to the professional principles and licensed legal services providers are under an equivalent duty by virtue of the 2010 Act. Individual practitioners (e.g. solicitors) will be under a similar duty and non-compliance could have an impact on authorisation to provide legal services in all cases.
- 13.3. The objectives have a specific focus on consumers, requiring that regulators take into account the principles that:
- a consumer should have access to a range of legal services that are affordable and suited to the consumer's needs,
 - a consumer should receive sufficient information about the consumer's rights and the services that are available,
 - a consumer should be treated fairly at all times,
 - a consumer should be able to access a means of redress when services are not of a suitable standard, and
 - the views of consumers should be understood and taken into account.
- 13.4. Regulation is used for a variety of different purposes, such as to protect and benefit people, businesses and the environment, and to support economic growth. Current good practice in regulation includes a focus on embedding the public, consumer and market interest in regulatory frameworks, and provides a flexible and responsive approach though proportionate and risk based objectives and principles.

The Legal Services Regulatory Framework

- 13.5. A proportionate framework will support increased independence of the regulatory function and provide for an increased focus on consumers. There will be specific duties placed on the legal services regulators in respect of how each branch of the profession will be regulated and to provide for increased transparency and accountability. The Lord President and the Court of Session will ensure independent oversight over the regulation of legal services.
- 13.6. The Bill will place extra duties on legal services regulators, depending on which category they have been assigned to, including the production of an annual report, the establishment of a register of members and a duty on category 1 regulators to comply with freedom of information requirements in respect of their regulatory function. These requirements will have cost implications on regulators but are intended to increase transparency and accountability and are aspects of good governance.

- 13.7. Consumers are expected to benefit from the changes introduced by the framework, which will introduce increased accessibility to and accountability of legal services by virtue of the extra duties described above.

Standards, Monitoring & Reporting

- 13.8. The Bill provides mechanisms for the Scottish Ministers to intervene should a regulator fail to regulate in the public interest or meet the regulatory objectives. The approach in the Bill builds on the existing model of co-regulation and seeks to provide an appropriate mechanism to make improvements should they be required or appropriate. The measures incorporate appropriate safeguards which protect the independence of the legal profession while reinforcing the duty to operate in the public interest.
- 13.9. These mechanisms would have an impact on any regulator against which they are exercised, in terms of a requirement to make changes or pay a financial sanction. They are intended to have a beneficial impact on the consumers of legal services and the members of the regulator.

Definition of Legal Services

- 13.10. The Bill will provide for a definition of legal services to provide for clarity and consistency in respect of regulation and complaints handling. The Bill introduces the ability for the Commission to consider complaints about the provision of legal services, using this definition, by a person providing legal services to the public for a fee, whether or not they are regulated. This means that unregulated legal services providers can be held to account by the Commission for the first time, which impacts those providers and the consumers of their services.

Alternative Business Structures

- 13.11. The Bill seeks to liberalise licensed legal services providers by removing restrictions which currently require such legal firms to operate for 'fee, gain or reward'. It will also allow for greater flexibility in respect of these 'alternative business structures', which currently require a minimum ownership of 51% by regulated professionals, by reducing this minimum ownership percentage to at least a 10% stake in the total ownership or control of the entity. This will allow greater flexibility to address concerns that Scottish legal firms are at a competitive disadvantage compared to other jurisdictions. This will make it easier for legal firms to go into partnership with other types of professionals such as accountants to provide shared services.
- 13.12. The Bill will also allow third sector organisations to directly employ solicitors to provide advice and representation to clients (without having to go through a separate legal firm).
- 13.13. These measures are intended to benefit the legal services sector, drive competition and innovation, and provide consumers with greater choice.

Rights for New Regulators to Provide Legal Services

- 13.14. The Bill will futureproof the regulatory framework by providing a route for new regulators to enter the Scottish legal services sector. The regulatory framework will be flexible enough to adapt to changes in the legal services market, providing consistency for existing and any potential future legal services regulators and their members.
- 13.15. If new regulators do enter the market in future, this could introduce new legal services providers to the sector, offering greater choice for consumers and driving competition with the traditional providers.

Regulation of Legal Businesses

- 13.16. The Bill will enable risk-based regulation of legal businesses as a whole, rather than regulation solely at individual professional level (e.g. individual solicitors) as is predominantly the case. Legal firms whose owners are individually regulated by a category 1 regulator will require to be authorised to operate. This change will provide regulation centred on the public interest and protection of the consumer, providing the opportunity for greater oversight which will enable the regulators and the legal profession to identify and address deficiencies early, taking the necessary preventative action affording better protection to consumers.
- 13.17. It is not anticipated that this will result in an increased burden on legal businesses. This new type of regulation is intended to operate in conjunction with the existing regulation of the individual legal practitioners who own and/or operate legal businesses, rather than to duplicate their regulatory responsibilities.
- 13.18. Introducing regulation of legal businesses will allow category 1 regulators to introduce a hybrid fee structure, based on the current practicing certificate fee and in addition include a fee on legal businesses based on their turnover. This is intended to allow for a fairer system of funding the regulatory framework.

Protection of Professional Titles

- 13.19. It is a criminal offence for any person to pretend, wilfully and falsely, to be a 'solicitor'. There are no such restrictions around the use of the term 'lawyer'. The expectation of the consumer is that anyone who refers to themselves as a 'lawyer' should be suitably qualified and regulated to do so. This is reflected in Law Society public polling, which indicates that 86% of respondents believe that there should be restrictions on who can call themselves, or advertise as, a lawyer.
- 13.20. The Bill will provide greater consumer protection and address concerns that unqualified persons or persons struck off from the legal profession can currently use such terms to describe themselves. This will affect those who

provide legal services to the public for financial gain using the title of lawyer but who are not subject to regulation. As set out the CMA view that this may affect competition in the provision of legal services by restricting who may call themselves a 'lawyer'. However, the intention is to allow consumers to be better informed about the legal services they purchase. Individuals who find themselves unable to use the title 'lawyer' will continue to be able to use alternative titles, such as 'legal advisor'. It is considered that consumers are more likely to be aware that those using titles like 'legal advisor' are distinct in their training and background from solicitors.

LegalTech

13.21. The Bill will enable risk-based and proportionate regulation of the use of LegalTech, by allowing regulators to grant waivers of targeted rules, in order to facilitate the use of regulatory sandboxes¹¹ to promote innovation under regulatory scrutiny. There is potential to benefit the sector and consumers through improved productivity, reduced costs and increased competitiveness. This includes a potential for the introduction of new technology and processes which could support consumers who are from hard to reach or vulnerable groups to access legal services.

Compensation funds and professional indemnity insurance

13.22. The Bill will require all category 1 regulators to introduce and maintain a compensation fund and professional indemnity arrangements. This would provide a risk-based approach to consumer redress and professional indemnity insurance. Category 2 regulators would require professional indemnity insurance as a minimum requirement.

13.23. These measures are designed to protect consumers and provide an avenue for compensation where they are entitled to it in relation to the legal services they have received.

13.24. The Bill retains and strengthens the SLCC's function to monitor the effectiveness of the compensation funds of category 1 regulators¹². The SLCC will be able to issue guidance which may set minimum standards in respect of the operation and effectiveness of the compensation funds. The Bill also maintains the SLCC's ability to make recommendations in relation to regulators' rules around professional indemnity.

The Legal Complaints System

¹¹ A regulatory sandbox is a regulatory approach that allows live, time-bound testing of innovations under a regulator's oversight. Novel financial products, technologies, and business models can be tested under a set of rules, supervision requirements, and appropriate safeguards.

¹² The Law Society's compensation fund is called the Client Protection Fund (though it is called the Guarantee Fund in establishing legislation) and its professional indemnity rules are referred to as the Master Policy.

- 13.25. The Bill reconstitutes the SLCC as the Scottish Legal Services Commission (“the Commission”) and provides it with an expanded independent oversight role of complaint handling by the regulated sector, in addition to a new role in overseeing complaints about unregulated legal services.
- 13.26. The Bill will reform the legal complaints system, to address concerns that the statute underpinning it is too restrictive and prevents complaints from being dealt with in a proportionate and risk-based way, adding undue cost and time to the legal complaints process for consumers and legal professionals. The Bill will seek to address these concerns by introducing a new flexible and proportionate legal complaints system, which benefits consumers and legal professionals in terms of seeking to allow prompt resolution of complaints and reduce the overall cost of the system, which is funded by a levy on the profession and has an impact of the cost of legal services to consumers.
- 13.27. The Bill seeks to promote collaboration between the Commission and the legal services regulators and places a greater duty on consultation between these bodies in relation to the complaints system.
- 13.28. The Commission will have an ability to set minimum standards for regulators in relation to their complaints handling and their oversight of how practitioners handle complaints in their first stage, before they reach the Commission. The Commission will also be able to direct legal practitioners as to minimum standards in complaints handling. It is envisaged that this would follow the model set by the Scottish Public Service Ombudsman (SPSO). For example, one of the SPSO’s responsibilities is to set and monitor complaints handling standards for the public sector in Scotland. These standards are published as the Model Complaints Handling Procedures and define how the SPSO expect each public service sector to handle complaints¹³.
- 13.29. An SLCC report¹⁴ published in March 2023 showed that the majority of complaints investigations take longer than the Law Society’s published average timescale of 12 months to complete. The report concluded that delays in the investigation of conduct complaints carry a number of risks, including public protection issues associated with solicitors continuing to practice whilst under investigation, and complainers concluding that their complaint is not being taken seriously, which may impact public confidence in the complaints process. The Commission’s ability to set minimum standards, introduced by the Bill, may have the potential to inform better practices that are designed to better serve consumers of legal services and reduce the number of complaints raised.
- 13.30. The current ability to appeal any decision of the SLCC at any stage can cause long delays in the time it takes to process a complaint. The majority (79%) of respondents to the consultation support a simplified and more accessible

¹³ [How to handle complaints | SPSO](#)

¹⁴ [SLCC makes recommendations for improvement to Law Society complaint handling timescales \(scottishlegalcomplaints.org.uk\)](#)

appeals process for legal complaints. The analysis found that the Court of Session is considered to be too expensive for both consumers and legal professionals, limiting accessibility. It is the intention that the Commission be the final arbiter in respect of service issue complaints. Appeals about service complaints would be considered by a Review Committee of the Commission comprised of legal and non-legal members. The intention is to make the appeals system for complaints more affordable and accessible. This is similar to the position in respect of other ombudsmen for services complaints including the Legal Ombudsman (for England & Wales), the Financial Ombudsman Service and the Scottish Public Services Ombudsman. However, as with other public bodies, decisions would remain open to judicial review.

13.31. The Bill will also allow the Commission to investigate and determine complaints against unregulated legal service providers. It will be for the Commission to set the rules for how complaints will be considered eligible and how they will be determined. This will provide regulation centred on the public interest and introduce new protections for consumers of legal services from unregulated providers.

13.32. It also introduces a new, but limited, regulatory burden on unregulated providers who will be subject to the complaints process for the first time. Unregulated providers will have the opportunity to sign up to the Commission's voluntary register. Membership of the register would require payment of an annual contribution but would be taken into account in terms of payment of the complaints contribution which is required where a services complaint is upheld.

13.33. The handling of complaints is one of the most important parts of any regulatory system. It is crucial that users of legal services have access to an efficient, effective and fair process for dealing with their complaint. Equally, legal professionals rely on a complaints system which is efficient, effective and can resolve complaints in an impartial manner, which the Bill is designed to provide.

14. Regulatory and EU Alignment Impacts

Intra-UK Trade / International Trade

14.1. In respect of intra-UK trade and international trade, the Bill will seek to place Scottish legal firms on a level playing field with counterparts in other parts of the UK and other jurisdictions in respect of their ability to attract outside investment. In addition, the Bill will introduce regulation of legal businesses, an existing feature of legal services regulation in other parts of the UK. In terms of cross-border legal businesses, the Bill does not affect their operation outside of Scotland and only relates to the provision of legal services in Scotland.

EU Alignment

- 14.2. The measures are consistent with the Scottish Government's EU alignment policy and commitment to maintain and advance the high standards that Scotland shares with the EU.

15. Scottish Firms Impact Test

- 15.1. 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) were engaged in the development of the consultation and in promoting it to their members.
- 15.2. A number of legal firms and legal professionals responded to the consultation, and their views have supported the development of the proposals in the Bill.
- 15.3. The Bill seeks to ensure an independent, strong and diverse legal profession by placing this at the core of legal services regulatory objectives. The Bill seeks to support investment into the legal profession through liberalisation of business structures and set out as a regulatory objective, regulatory functions should be exercised in a way that contribute to achieving sustainable economic growth.
- 15.4. In addition, the introduction of 'entity regulation' will not seek to replace or dilute regulation at individual level. To ensure the strongest of consumer protections, a 'hybrid' approach will be introduced. Regulating legal businesses as well as individual solicitors through a hybrid approach will provide more efficient and effective regulation – both from the consumer and the solicitor perspective, by providing proportionate and appropriately targeted regulation.

16. Competition Assessment

- 16.1. The Bill seeks to increase competition and innovation in the legal services market, primarily through greater flexibility in respect of alternative business structures and through the use of regulatory sandboxes.

- **Will the measure directly or indirectly limit the number or range of suppliers?**

- 16.2. It is not anticipated that the Bill will directly or indirectly limit the number or range of suppliers. However, provision within the Bill seeks to promote competition and provide a route to increase the range of suppliers.

- **Will the measure limit the ability of suppliers to compete?**

- 16.3. The measures within the Bill seek to promote competition within the legal sector, through relaxation of restrictions on ownership of certain legal businesses, and provisions which allow for regulator sandboxes.

- 16.4. The Bill seeks to liberalise licensed providers by removing restrictions which currently require such firms to operate for ‘fee, gain or reward’, and to have a minimum ownership of 51% by regulated professionals. Instead, regulated professionals would require to have at least a 10% stake in the total ownership or control of the entity. This will allow greater flexibility to address concerns that Scottish legal firms are at a competitive disadvantage compared to other jurisdictions.
- 16.5. Technology and innovation can benefit the legal sector and consumers. It can provide easier, more intuitive access to services, as well as supporting the future of the economy. As in other sectors it is increasingly a source of challenge and new opportunity, and as such should be given proportionate regulatory scrutiny. The Bill allows for regulators to grant waivers to rules to promote innovation and competition within the legal services sector.
- 16.6. While the CMA have urged caution in respect of the regulation of legal businesses and protection of professional legal titles, the consultation shows broad support for the introduction of these measures.
- **Will the measure limit suppliers' incentives to compete vigorously?**
- 16.7. It is anticipated that the measures highlighted in this section will promote vigorous competition within the legal sector in Scotland.
- **Will the measure limit the choices and information available to consumers?**
- 16.8. The Bill seeks to improve the choices available to consumers, in particular by liberalising the ownership requirements for licensed legal services providers and also by providing for new regulators to be able to enter the market and for their members to acquire rights to provide legal services.
- 16.9. To ensure the strongest of consumer protections, a ‘hybrid’ approach to regulation will be introduced. Regulating legal businesses as well as individual solicitors through a hybrid approach will provide more efficient and effective regulation – both from the consumer and the solicitor perspective, by providing proportionate and appropriately targeted regulation.
- 16.10. The Bill will provide the Commission with the ability to monitor unregulated legal services and set rules about investigation such complaints, this will affect providers of unregulated legal services who will have the option to voluntarily register with the Commission. It will support consumers by providing them with information to make an informed choice when considering a service provider.
- 16.11. In terms of the information available to consumers, the Commission’s duty to provide information on how complaints are made is maintained by the Bill. Regulators will be under a duty to take into account the principle that a

consumer should receive sufficient information about the consumer's rights and the services that are available.

17. Consumer Assessment

17.1. 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. Many people will have no issue with the legal services they use. The first time that lay persons encounter legal services regulation may be where they either receive or perceive that they have received a poor service and raise a legal complaint. The Bill seeks to improve the legal complaints system and increase the independent oversight of the sector. In addition, increase transparency and accountability, and provide for mechanisms for Ministers to intervene should regulators fail to meet the regulatory objectives or act in the public interest, but in a way which is consistent with the principle of upholding the independence of the legal profession and the rule of law.

17.2. The Bill seeks to place consumer interests at the heart of regulation. In doing so the Bill places the consumer principles within the core of legal services regulation within the regularity objectives.

17.3. The Bill provides for measures intended to provide for increased consumer protection, improve the consumer journey and consumer choice for legal service users.

17.4. Measures such as the regulation of legal businesses and protection of professional legal titles provide for greater consumer protection. While increased flexibility in respect of business structures supports consumer choice. In addition, reform of the complaints system seeks to improve the process for consumers and extends a route to redress in respect of unregulated legal services.

- **Does the policy affect the quality, availability or price of any goods or services in a market?**

17.5. The Bill seeks to improve the quality of legal services through measures such as regulation of authorised legal businesses (entity regulation) and by protecting certain legal titles (offences relating to pretending to be a regulated provider of legal services). The Bill also seeks to improve the availability and price of legal services through the measures set out above in respect of promoting competition and innovation in the legal sector.

- **Does the policy affect the essential services market, such as energy or water?**

17.6. The Bill does not affect essential services markets.

- **Does the policy involve storage or increased use of consumer data?**

17.7. As explored within the associated data protection impact assessment the Bill does not make changes to the current system.

- **Does the policy increase opportunities for unscrupulous suppliers to target consumers?**

17.8. No. The measures in the Bill relating to protection of professional titles and the ability to make complaints against unregulated legal services providers seek to decrease opportunities for unscrupulous suppliers from targeting consumers.

- **Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these / Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?**

17.9. In terms of the information available to consumers, the Commission's duty to provide information on how complaints are made is maintained by the Bill. Regulators will be under a duty to take into account the principle that a consumer should receive sufficient information about the consumer's rights and the services that are available.

17.10. On routes to raise complaints, the Bill broadens the Commission's remit to consider legal complaints, in particular in relation to complaints against unregulated legal services providers. The Commission will also be able to receive a new type of regulatory complaint in relation to authorised legal businesses.

18. Test Run of Business Forms

18.1. Engagement will be undertaken with relevant stakeholders on new business forms that are developed as a result of the measures in the Bill. The Bill places various duties on the regulators and the Commission to consult on rules changes.

19. Digital Impact Test

19.1. Technology and innovation can benefit the legal sector and consumers. It can provide easier, more intuitive access to services, as well as supporting the future of the economy. As in other sectors it is increasingly a source of challenge and new opportunity, and as such should be given proportionate regulatory scrutiny.

19.2. The Robertson report recommended flexible regulation which would help to realise the potential benefit of legal technology, particularly to Scotland's dispersed rural population groups. The report set out that regulation should not put up artificial barriers to new services.

- 19.3. Individual legal practitioners and businesses are responsible and accountable for the technology that they use and are subject to rules and oversight of their respective regulator. The policy intention is to allow for the use of regulatory sandboxes, to promote the use of technology and innovation in the legal sector.
- 19.4. The Bill sets out that regulators may, on the application of a legal services provider vary or disapply rules to provide flexibility to promote the use of Sandboxes and innovation in the provision of legal services.
- 19.5. The policy intention of the Bill is to provide oversight of all legal services and allow a proportionate and risk-based approach to unregulated legal services. The Bill will provide the Commission with the ability to monitor unregulated legal services and set rules about investigation such complaints. However, it may not be possible for the Commission to act on any complaints in respect of services from unregulated online providers originating from other jurisdictions.
- 19.6. The Bill requires category 1 and 2 regulators to publish a register of their members online, however the Bill does not prevent regulators from making such information accessible in other ways and, not would it affect the regulators' obligations under the Equality Act 2010.

20. Legal Aid Impact Test

- 20.1. The Scottish Legal Aid Board have been consulted on the proposals in the Bill.
- 20.2. While the Bill creates a number of new offences, it is not considered that there will be a notable impact on the Legal Aid Fund. It is estimated that the increase in the number of court prosecutions as a result of offences created by measures within the Bill will be relatively low.
- 20.3. In addition, while the Bill will allow charities to employ solicitors to directly undertake reserved activity, such charities generally have arrangements in place with legal firms set up specifically for such services. Therefore it is not anticipated that there will be a notable impact on the Legal Aid Fund as a result of this proposal, as it is anticipated the number of people eligible for legal aid will not change as a result of the Bill.
- 20.4. The impact on the Legal Aid Fund will continue to be reviewed.

21. Enforcement, Sanctions and Monitoring

- 21.1. The Bill places a duty on legal services regulators to report annually to provide information demonstrating how the regulator (or its regulatory committee) is complying with the regulatory objectives. Category 1 regulators will send their report to the Scottish Ministers who will lay a copy with the

Scottish Parliament. Category 2 regulators, which are smaller and less consumer-facing, are required to publish their annual report.

21.2. The Bill gives the Scottish Ministers the power to review the performance of a category 1 or 2 regulator's exercise of their regulatory function where a requesting body is concerned that the regulator is failing to exercise its regulatory functions in a manner that is compatible with the regulatory objectives, or in the public interest. This process builds on provision already in the 2010 Act¹⁵ in relation to approved regulators of licensed legal services providers. Scottish Ministers may be asked to conduct a review by:

- the Scottish Parliament (whether or not following consideration of the regulator's annual report),
- the Competition and Markets Authority, or
- Consumer Scotland.

21.3. Following any review, Scottish Ministers must publish a report detailing their findings and measures they intend to take. Where there is evidence of a regulator failing to regulate in the public interest or meet the regulatory objectives, and considered appropriate Scottish Ministers would be able to consider taking the following measures:

- (a) setting performance targets,
- (b) directing that action be taken,
- (c) publishing a statement of censure,
- (d) imposing a financial penalty,
- (e) making changes to, or removing some or all of the regulator's functions.

21.4. In determining what action is appropriate, the Scottish Ministers would have regard to the effect that a measure or combination of measures would have on the regulator's observance of the regulatory objectives. Prior to imposing any of the measures, there are specified notification and consultation requirements which must be adhered to in the 2010 Act that would be mirrored, i.e. where the consent of the Lord President is required in relation to most measures.

21.5. The Bill also creates the following new offences, the intended effect is similar to section 31 of the Solicitors Scotland Act 2010, which sets out it is an offence for unqualified persons to pretend to be a solicitor or notary public.

- Section 32(1) – offence of pretending to have acquired rights

¹⁵ See sections 37 and 38 of the 2010 Act.

- Section 39(4) – offence for a person to own or operate an unauthorised legal business
- Section 40(1) – offence of pretending to be an authorised legal business
- Section 82(1) – offence of taking or using the title of lawyer
- Section 83(1) – offence of pretending to be a regulated legal services provider
- Section 84(1) – offence of pretending to be a member of the Faculty

22. Implementation and Delivery Plan

22.1. It is intended that implementation of measures introduced by the Bill are staggered over late 2024 to early 2025. This is to allow measures to be developed prior to implementation and enforcement, including progressing necessary secondary legislation. This will involve the bodies within the current regulatory landscape and other key stakeholders. Existing processes will require to be adapted to take into account the changes the proposed legislation will bring, as well as consideration of new systems or processes that will be required to be developed to administer proposed measures within the Bill. The Scottish Government will continue to engage with stakeholder organisations, including the legal sector in Scotland, as the measures are developed and implemented.

23. Post-implementation Review

- 23.1. The Scottish Government will undertake a review of the proposed measures introduced through the Bill within 3-5 years of implementation to monitor that requirements are being met and that the legislation is working effectively.
- 23.2. Continued engagement with stakeholders will allow us to monitor the impact of the new framework and review these a year after implementation.

24. Summary and Recommendation

- 24.1. Option 4: Introduce the measures within the Regulation of Legal Services (Scotland) Bill.
- 24.2. This option is viewed as the most proportionate and effective way to 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.

25. Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.
Signed:

Date:

3rd May 2023

Minister's name Siobhian Brown

Minister's title: Minister for Victims & Community Safety

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