

Equality Impact Assessment Record

Regulation of Legal Services (Scotland) Bill

May 2023

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Title of policy/ practice/ strategy/ legislation etc.	Regulation of Legal Services (Scotland) Bill	
Minister	Siobhian Brown, Minister for Victims and Community Safety	
Lead official	Jamie Wilhelm / Rebecca Smith	
Officials involved in the EQIA	Name	Team
	Rebecca Smith Jamie Wilhelm Leanna MacLarty Equality Evidence ¹	Access to Justice Access to Justice SGLD Justice Analytical Services
Directorate: Division: Team	Access to Justice Civil Law and Legal System Justice Directorate	
Is this new policy or revision to an existing policy?	New policy	

Screening

Policy Aim

1. Background

- 1.1. In December 2015, the Law Society of Scotland submitted a paper entitled ‘The Solicitors (Scotland) Act 1980 Case for Change’ to Scottish Ministers, which set out proposals for developing primary legislation that would deliver reforms to their regulatory powers. The stated intention behind those proposals was to support growth in the legal services sector, through a more modern and proportionate approach to regulation, and to strengthen consumer protection.
- 1.2. In 2016, the Scottish Legal Complaints Commission (“SLCC”) published a paper setting out its priorities for reform². 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. The SLCC sought that a ‘framework’ Act

¹ [Equality evidence finder](#)

² [reimagine regulation \(scottishlegalcomplaints.org.uk\)](http://reimagine-regulation.scottishlegalcomplaints.org.uk)

be introduced, which would not prescribe administrative processes in primary legislation.

1.3. To further develop views on potential reforms, the Scottish Government established an independent review of the regulation of legal services. That review was taken forward by an independent panel chaired by Esther Roberton 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. In October 2018, 'Fit for the Future – the Report of the Independent Review of Legal Services Regulation in Scotland' was published³. The 'Roberton 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.

1.5. The Roberton 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

³ [Legal services regulation: independent report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

regulator should be a body accountable to the Scottish Parliament and subject to scrutiny by Audit Scotland.”

1.7. The Chair’s primary recommendation would be a departure from the current model which may be described as co-regulation but which can sometimes be perceived from a lay perspective as self-regulation.

1.8. The Scottish Government response to the Robertson report was published in June 2019. 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 2022-23 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 looks at the objectives of regulating legal services, the professional principles and other overarching material,
- Chapter 2 sets rules for all regulators of legal services. In doing so, it 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 of Scotland (“Law Society”)) to create and apply a set of rules for the regulation of legal services at a business level (e.g. to require traditional firms of solicitors etc. to be regulated as firms as opposed to a collection of solicitors).

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 be provided only by regulated persons.

Part 5 deals with a number of general matters.

Key measures in the Bill include:

2.4. 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.

2.5. 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) Principles⁴. The Better Regulation principles aim to ensure that regulation is effective, proportionate, transparent, and based on evidence. The purpose of these 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 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.

⁴ There is crossover between the Better Regulation, Consumer, and Human Rights principles. For example.

- 2.6. Allow 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 objectives⁵.
- 2.7. Allowing for greater flexibility in respect of alternative business structures, the Bill will seek to liberalise licensed legal services providers by removing restrictions which currently require such legal firms 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.
- 2.8. Enabling risk-based regulation of business areas, allowing for regulation of a legal firm as a whole, rather than solely at individual professional level as is predominantly the case.
- 2.9. 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.
- 2.10. 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 sandboxes⁶ to promote innovation under regulatory scrutiny.
- 2.11. 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. The need for robust legal regulation and reform of the current regulatory landscape

- 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

⁵ 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.

⁶ 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.

the provision of legal services whereby consumers either receive or perceive that they have received a poor service⁷. 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"⁸. 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'⁹.

⁷ 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.

⁸ Section 1 of the Legal Services (Scotland) Act 2010.

⁹ [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 outcomes¹⁰:

- 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)¹¹, which sets out Justice Priorities for this parliamentary session:

- 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.

¹⁰ [National Performance Framework | National Performance Framework](#)

¹¹ [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](#)

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. Benefits of the proposed model

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

4.2. 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.

4.3. 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 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.

Who will it affect?

5. Background

5.1. 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 also affect

legal firms which will become subject to '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.

5.2. Legal services regulation has several impacts on equality, including:

- Access to justice – legal services regulation can impact individuals' ability to access justice, particularly for those who are economically disadvantaged or have historically marginalised backgrounds. Regulation may introduce entry barriers, for example by reserving certain activity to qualified individuals such as solicitors, while regulation can be helpful in ensuring the provision of quality legal services in a way that meets the needs of individuals from different backgrounds through specialist training and accreditation. This ensures appropriate consumer protection and routes to redress.
- Diversity and inclusion – regulation plays a critical role in promoting diversity and inclusion within the legal profession. Regulation can encourage better recruitment and retention of individuals from diverse ethnic and cultural backgrounds, help to implement policies to reduce communication barriers and address practices that may be exclusionary.
- Professional standards – relating to the quality and content of legal services. Legal services regulation is instrumental in setting professional standards, which helps to ensure the quality and effectiveness of legal services and increase public confidence in the legal system.
- Monitoring and oversight – legal services regulation typically involves monitoring and enforcement mechanisms to ensure legal practitioners are accountable for ethical, professional and competent delivery of legal services. This can help in identifying and correcting any discriminatory and unethical behaviour and provide a route to appropriate redress.
- Overall, the impact of legal services regulation on equality is complex and varies depending on the context and the specific regulation involved. However, ensuring access to quality legal services, promoting diversity and inclusion within the legal profession, upholding high professional standards, and providing effective monitoring and oversight, all contribute towards greater equality in the provision of legal services.

5.3. While the Robertson report identified the absence of a comprehensive baseline survey of consumers of legal services in Scotland, it did

commission a User Research Report¹². The key findings of that report were:

- Self-organised learning – users upskill themselves to be able to deal with the legal system by consulting friends and family members or online resources.
- Cost and location – users perceive these to be the two main factors when deciding on a legal service provider.
- Building trust – users rely on recommendations from their personal network to find a suitable solicitor. Some users mentioned using websites such as “Trustpilot” to read online reviews about solicitors before hiring them.
- Simplifying language – users feel that the legal world is full of jargon and that this creates a power imbalance in the relationship where solicitors hold a stronger position.
- Silent suffering – despite being dissatisfied with their legal services providers, some users do not make a complaint, in order to avoid the emotional ordeal they may have to go through all over again.
- Understanding emotions – some legal journeys are very emotional experiences, such as those related to bereavement, and users’ decisions can be influenced by how they might be feeling within that context at certain times of the journey.
- Making sense – users cannot always make sense of the services they receive from their solicitors even after the outcome has been received.
- Straightforwardness – users feel that for certain standard tasks such as conveyancing, solicitors should have a consistent pricing model, and they should be able to advise of the costs upfront.
- Leveraging DIY – users showed an inclination towards trying a Do-It-Yourself (DIY) approach but some users were more comfortable doing that than others. Also, certain DIY processes don’t take into account users’ emotional state at that stage of the user journey.

5.4. This study highlights how legal services currently interact with and affect consumers. The proposals in the Bill seek to place the public and consumer interests at the heart of legal services regulation so that it may learn from these user experiences.

6. The Scottish Legal Aid Board’s monitoring role

6.1. The 2010 Act introduced to the Scottish Legal Aid Board (SLAB) the function of monitoring the availability and accessibility of legal services in

¹² [Review of the Regulation of Legal Services \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk)

Scotland, with reference to relevant factors relating particularly to urban and rural areas. SLAB have arrangements in place to monitor legal services by:

- Analysing the organisation's data on trends in legal assistance and supply.
- Supplementing this with other sources of data about legal services including information that may be requested of the Law Society, the Faculty and the Scottish Courts and Tribunals Service.
- Seeking the views of stakeholders, including service providers and users.

Civil

6.2. The majority of civil legal aid clients said they found it very or quite easy to find a solicitor to help them (72%), while a further 18% (66 people) said they found it very or quite difficult and the remaining 10% found it neither easy nor difficult. Similarly, 78% of Advice and Assistance survey respondents said they found it very or quite easy to find a solicitor to help them, 15% (23 people) found it very or quite difficult and the remaining 6% found it neither easy nor difficult¹³.

Criminal

6.3. Ten people (5% of those who gave an opinion) experienced difficulty finding a solicitor to help them. This is identical to the 2018 private practice criminal client survey. The most common difficulty was not having many solicitors in their local area (five people)¹⁴.

7. Scottish Crime and Justice Survey

The Scottish Crime and Justice Survey 2019/20 finds the volume of crime in Scotland, including incidents not reported to the police, has fallen by 46% over the last decade or so – from an estimated 1,045,000 incidents in 2008/09 to 563,000 in 2019/20¹⁵.

8. Civil justice statistics in Scotland

8.1. The Scottish Crime and Justice Survey 2019-20 estimates that around three-in-ten adults experienced civil law problems in the three years prior to interview.

8.2. Some groups in the population were more likely to experience civil law problems than the general population. For example, an estimated 36% of those who are disabled experienced a civil law problem compared with 26% of those who are not disabled. Those aged 60 years and over were less likely to experience civil law problems compared with other age

¹³ [Introduction \(slab.org.uk\)](https://www.slab.org.uk)

¹⁴ [2021-Survey-of-private-practice-legal-aid-clients.pdf \(slab.org.uk\)](#)

¹⁵ [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](https://www.gov.scot)

categories (17%, compared with 34% for both 16-24 and 25-44 age categories and 32% for those aged 45-59). Victims of crime suffered a higher prevalence of civil law problems (40%) compared with non-victims (26%).

8.3. Among the problem areas listed above, 17% of adults had experienced problems with home or family living arrangements, 10% had experienced problems with money, finances or anything they had paid for, 7% had been treated unfairly in some respect and 5% had experienced health or well-being problems. In line with previous years, the most common single problem was with neighbours, experienced by 11% of adults¹⁶.

Conveyancing

8.4. The volume of residential property sales in 2021 was 117,370, the highest annual volume in the last 5 years¹⁷.

9. Bill measures

• The regulatory objectives and professional principles

9.1. The Bill introduces a modern set of regulatory objectives and professional principles which will support an increased focus on quality improvement and proportionate risk-based regulation, while incorporating the Better Regulation, the Consumer Principles and the Human Rights (PANEL) Principles¹⁸. These can be found in section 2(1)(b) to (d) (as read with section 3(2) to (4)). This approach will seek to ensure regulation of legal services benefits from learning, and places consumers at its heart.

9.2. 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.

9.3. For the purpose of section 2(1)(b) and (c), the regulators must 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,

¹⁶ [Civil justice statistics in Scotland 2020-21 - gov.scot \(www.gov.scot\)](https://www.gov.scot/civil-justice-statistics-in-scotland-2020-21)

¹⁷ [Scotland's housing market in 2021 – insideRoS | The Registers of Scotland blog](https://www.insideros.com/scotland-housing-market-2021)

¹⁸ There is crossover between the Better Regulation, Consumer, and Human Rights principles.

- 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.

9.4. Section 3(4) incorporates the Better Regulation Principles which require systems to be proportionate, consistent, accountable, transparent, and targeted only where needed. In particular, better regulation does not mean disproportionately heavy regulation but right-touch regulation.

9.5. The Bill requires the category 1 and 2 regulators to prepare a report on the exercise of its regulatory functions as soon as practicable after the end of each reporting year and demonstrate how the regulator is complying with the regulatory objectives.

9.6. Section 4 of the Bill sets out, as professional principles, that persons providing legal services should:

- support the proper administration of justice,
- act with independence (in the interests of justice),
- act with integrity,
- act in the best interests of their clients (and keep clients' affairs confidential),
- maintain good standards of work,
- where exercising a right of audience before any court or conducting litigation in relation to proceedings in any court, comply with such duties as are normally owed to the court by such persons,
- meet the person's obligations under any relevant professional rules,
- act in conformity with professional ethics.

9.7. Section 3(3) of the Bill also sets out that regulators must encourage equal opportunities (as defined in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).

9.8. 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**

- 9.9. The Lord President and the Court of Session will ensure independent oversight over the regulation of legal services.
- 9.10. A proportionate framework will support increased independence 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.
- 9.11. The Bill places a duty on regulators to publish a register of their members, the requirement on regulators to provide a practitioner's contact details to the Commission and a duty on disciplinary tribunals to publish their findings. These requirements can be justified and are proportionate on the basis of the public interest in the proper regulation and accountability of legal services and protection of the rights of those accessing legal services.
- 9.12. Section 17 of 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.
- 9.13. The register of regulated members will help consumers access information before entering into an agreement with a legal professional. The publication of disciplinary findings will provide transparency and help consumers ensure they are accessing legal services appropriately. The provision of information to the Commission will help ensure the commission can fulfil its duty to the legal consumers in terms of investigating complaints.
- **Standards, monitoring & reporting**
- 9.14. The Bill provides for 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 allows for measures to be placed on regulators, including performance targets and financial penalties, 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.
- 9.15. As set out, the Bill incorporate the Consumer Principles within the regulatory objectives and so the measures provide protections to legal services consumers. In addition, the requirement to encourage equal opportunities supports diversity in the legal profession and seeks to ensure legal services meet the needs of those of all backgrounds.

9.16. Measures could have cost implications on regulators but are intended to increase transparency and accountability and are aspects of good governance.

- **Definition of legal services**

9.17. 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. This seeks to provide greater protections to the most vulnerable consumers of legal services and provide a level playing field in terms of the redress available.

- **Alternative business structures**

9.18. The Bill seeks to liberalise licensed legal services providers¹⁹ by removing restrictions which currently require such businesses to operate for 'fee, gain or reward', and which require 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. This will make it easier for legal firms to go into partnership with other types of professionals such as accountants to provide shared services.

9.19. 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). This measure may benefit the most vulnerable users of legal services who may disengage with the system due to 'referral fatigue', where they require to repeat the matter affecting them to multiple persons.

9.20. These measures are intended to benefit the sector, drive competition and innovation, and provide consumers with greater choice.

- **Rights for new regulators to provide legal services**

9.21. The Bill will future proof the regulatory framework allowing it to adapt to changes in the legal services market, providing consistency for

¹⁹ Licensed legal services providers are business entities, created by the 2010 Act, which may be set up for the purpose of providing legal services but may be majority owned by individuals who are not solicitors, though they must be members of a regulated profession as defined by that Act.

existing and any potential future legal services regulators and their members.

- 9.22. There is potential for any new regulator who acquires such rights to increase competition and diversity in the market, and potentially also increasing the choice available to consumers.

- **Regulation of legal businesses**

- 9.23. 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.

- 9.24. This new type of regulation focused on legal businesses is aimed at providing regulators with the ability to oversee more consistency in legal services provision and the standards which may be expected by consumers, and also with more power to tackle any pervasive culture leading to bullying or harassment in legal firms.

- 9.25. 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. This may place a greater onus on the regulation of legal services being funded predominately at a business level rather than an individual level and support equality by providing more scope for a fee structure which recognises part-time staff , supporting those with caring responsibilities.

- **Protection of professional titles**

- 9.26. It is a criminal offence for any person to pretend, wilfully and falsely, to be a 'solicitor' but 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.

- 9.27. 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. The

intention is to allow consumers to be better informed about the legal services they purchase, and protect consumers from those who are not appropriate to provide legal services.

- **LegalTech**

9.28. 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 sandboxes²⁰ to promote innovation under regulatory scrutiny. There is potential to benefit the sector and consumers through improved productivity, reduced costs and increased competitiveness. An example of how this measure may support equality objectives may include waivers being granted which allow for exemptions from continuous, professional development requirements to those with caring responsibilities.

- **Compensation funds and professional indemnity insurance**

9.29. 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.

9.30. The SLCC has an oversight role in connection with the compensation funds and professional indemnity rules of the Law Society and other legal services regulators²¹. This oversight power was in response to concerns expressed at that time about delays in receiving settlement under the two schemes.

9.31. The consultation following the Robertson report indicated a broad consensus that the Guarantee Fund currently works well. However, in considering its role in providing consumer redress, the Bill retains the SLCC's function to monitor the effectiveness of the compensation funds of category 1 regulators. 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.

9.32. The intention is that by requiring all category 1 regulators to establish a compensation fund this will benefit consumers who may have who have lost money because of the dishonesty of a legal professional.

²⁰ 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.

²¹ 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.

The requirement for all regulators to establish professional indemnity insurance for their members is intended to protect consumers as a result of the impact of any negligent advice or services, and also offer an appropriate degree of protection to legal professionals.

- **The legal complaints system**

9.33. Legal services regulation provides redress to consumers in several ways. It ensures that legal practitioners are competent and ethical in their dealings with clients. This means that vulnerable consumers are less likely to be exploited or mistreated by legal practitioners. Secondly it establishes procedures for handling complaints and disputes between clients and legal practitioners. This allows vulnerable consumers to seek redress if they are dissatisfied with the services provided or feel they have been treated unfairly. Thirdly, it may provide financial protection to vulnerable consumers in other ways, for example, through compensation. Legal practitioners also require to have professional indemnity insurance, which means that clients can claim if they suffer financial losses due to the practitioner's negligence or misconduct. Overall, legal services regulation plays an important role in protecting vulnerable consumers by ensuring that legal practitioners are competent, ethical, and accountable.

9.34. 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.

9.35. 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.

9.36. 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.

9.37. 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 complaints²².

9.38. An SLCC report²³ 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.

9.39. 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 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.

9.40. 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.

What might prevent the desired outcomes being achieved?

²² [How to handle complaints | SPSO](#)

²³ [SLCC makes recommendations for improvement to Law Society complaint handling timescales \(scottishlegalcomplaints.org.uk\)](#)

10. Significant amendments to the Bill which contradict the policy intention to promote competition and innovation in the legal sector while improving the transparency and accountability of legal services regulation and the legal complaints system, or amendments which undo the policy intention to provide a proportionate and risk-based regulatory framework and complaints system, would prevent the desired outcomes being achieved.

Consultation

11. 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.

11.1. 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.

11.2. 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

11.3. 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.

- **Within Government**

11.4. 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 (SGLD - Scottish Government) on legal basis for legislation.
- The Judiciary
- The Competition and Markets Authority (CMA)
- Financial Conduct Authority (FCA)

- **Public Consultation**

11.5. 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, in addition to the first model proposed by the Robertson report. The additional models on which views were sought included:

- Model 1: the Robertson Model, as recommended by the Robertson report. This would introduce a single, independent regulator that would be responsible for entry, standards, monitoring, complaints and redress in respect of the legal profession.
- Model 2: a Market Regulator Model. This would introduce an independent market regulator, who would oversee the work of the current 'authorised regulators', each having distinct roles and purpose.
- Model 3: an Enhanced Accountability and Transparency Model. In this model, the current regulators would continue to regulate their respective professions. There would be a focus on enhanced accountability and transparency, and a simplification of the current framework. The regulators would also be required to ensure that they embed a consumer voice in their organisation to provide advice, represent the views of consumers and organise research.

11.6. All options focus on the way in which legal services are regulated in Scotland, and the operation of the complaints process. 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

11.7. 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

- 11.8. 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 in legal services regulation (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.
- 11.9. 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:

- 11.10. 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.

- **Business**

- 11.11. 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.

- **Consultation Analysis**

- 11.12. 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.
- 11.13. The responses to the consultation have been invaluable in supporting the Scottish Government in considering this reform.

11.14. 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).

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%

11.15. 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.

11.16. 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.

Stage 1: Framing

Results of framing exercise

In developing this EQIA the Scottish Government is mindful of the three needs of the Public Sector Equality Duty – eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share a protected characteristic and those who do not and foster good relations between people who share a protected characteristic and those who do not.

The framing exercise has identified some potential minor negative impacts upon consumers and those within the legal profession.

The policy aims to improve the overall experience for users of legal services and those who have a role within the legal profession. This will have a positive impact on access to justice.

Extent/Level of EQIA required.

Given the equality impacts of the Bill an Equality Impact Assessment is required. This assessment will consider the potential impacts of the Bill that might disproportionately affect certain groups of people, and opportunities that the policy might present to advance equality and foster good relations.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ²⁴	Evidence gathered and strength/quality of evidence	Source	Data gaps identified and action taken
Age	Legal Professionals Legal Consumers (General population in Scotland)	Profile of the Profession 2018 Diversity Data from 2020/21 Practising Certificate (PC) Renewal 2011 census Scotland's Census (scotlandscensus.gov.uk)	While the Robertson report identified the absence of a comprehensive baseline survey of consumers of legal services in Scotland, information about the general population of Scotland has been used to illustrate legal services users.
Disability	Legal Professionals Legal Consumers (General population in Scotland)	Profile of the Profession 2018 Diversity Data from 2020/21 Practising Certificate (PC) Renewal 2011 census Scotland's Census (scotlandscensus.gov.uk) The Scottish Household Survey 2020 (telephone survey key findings)	The Scottish Crime and Justice Survey, number of criminal, civil and conveyancing proceedings provides an indication of the number of legal users.
Sex	Legal Professionals	Profile of the Profession 2018 Diversity Data from 2020/21 Practising Certificate (PC) Renewal	

²⁴ Refer to Definitions of Protected Characteristics document for information on the characteristics

	Legal Consumers (General population in Scotland)	2011 Census 2011 census Scotland's Census (scotlandscensus.gov.uk)	
Pregnancy and maternity	Legal Professionals	Profile of the Profession 2018	
	Legal Consumers (General population in Scotland)	Births, Deaths and Other Vital Events - Quarterly Figures: Fourth Quarter National Records of Scotland (nrscotland.gov.uk)	
Gender reassignment	Legal Professionals	Profile of the Profession 2018	
	Legal Consumers (General population in Scotland)	The Scottish Public Health Network Report on the Health Care Needs Assessment of Gender Identity Services Government Equalities Office, National LGBT Survey	
Sexual orientation	Legal Professionals	Profile of the Profession 2018 Diversity Data from 2020/21 Practising Certificate (PC) Renewal	

	Legal Consumers (General population in Scotland)	2011 census Scotland's Census (scotlandscensus.gov.uk)	
Race	Legal Professionals	Profile of the Profession 2018 Diversity Data from 2020/21 Practising Certificate (PC) Renewal The report of the Racial Inclusion (LSS)	
	Legal Consumers (General population in Scotland)	2011 census Scotland's Census (scotlandscensus.gov.uk)	
Religion or belief	Legal Professionals	Profile of the Profession 2018 Diversity Data from 2020/21 Practising Certificate (PC) Renewal	
	Legal Consumers (General population in Scotland)	2011 census Scotland's Census (scotlandscensus.gov.uk)	

AGE

General population

Data from the 2011 Census shows that, in the general population in Scotland, 16% were aged 0-14; 13% were aged 15-24; 7% are aged 25-29, 20% were ages 30-44, 21% were aged 45-59, 15% were aged 60-74, 7% were 75-89; and 0.6% were aged 90 and over²⁵.

The Scottish Crime and Justice Survey estimates that 75% of adults were confident that the Scottish justice system makes sure everyone has access to it if they need it in 2019/20, increased from 70% in 2008/09 (but unchanged since 2018/19 - 76%).

Younger adults were more confident than older adults that everyone has access to the justice system²⁶ (84% of 16-24 and 76% of both 25-44 and 45-59 year olds and 70% of people aged 60 and over).

Solicitors

The Law Society's Profile of the Profession 2018 reported:

Under 25	25-35	36-45	46-55	56-65	66-72	73 and older	Prefer not to say
111	880	654	647	372	46	12	10
4%	32%	24%	24%	14%	2%	0.4%	0.4%

²⁵ [Scotland's Census 2011 - National Records of Scotland](#)

²⁶ [Scottish Crime and Justice Survey 2018/19: main findings - gov.scot \(www.gov.scot\)](#)

Total solicitor population vs age analysis²⁷

Ethnic Group	% total solicitor population	% aged 30 and under
White Scottish / White British	86.47%	89%
Prefer not to say	7.13%	2.91%
Other	1.48%	1.57%
White Irish	1.24%	0.99%
Pakistani British, Pakistani Scottish or Pakistani	0.95%	1.40%
Mixed or multiple ethnic groups	0.74%	1.05%
Asian British, Asian Scottish or Asian	0.43%	0.70%
Polish	0.30%	0.81%
Jewish	0.29%	0.23%
Indian British, Indian Scottish or Indian	0.29%	0.35%
Chinese	0.26%	0.47%
Sikh	0.16%	0.17%
African British, African Scottish or African	0.13%	-
Bangladeshi British, Bangladeshi Scottish or Bangladeshi	0.06%	0.17%
Arab British, Arab Scottish or Arab	0.05%	0.12%
African – not specified	0.01%	-
Black British, Black Scottish or Black	0.01%	0.06%

Legal traineeships²⁸

The numbers accessing legal traineeships have been relatively stable for many years (with the exception of 2020). Prior to the pandemic, the “normal” was around **580** traineeships per annum. In **2021** these numbers had increased significantly to **744** and has risen again to a record number of **788 in 2022** (5.9% increase on 2021). The traineeships registered during the legal practice year – which runs from November to October- are spread between 274 organisations across Scotland, with roles in private practice and in-house organisations across a diverse range of employers.

It is worth noting that the Scottish Government is providing funding (from 2021 onwards for a 2 year full time / 4 year part time traineeship) for up to 40 trainee posts in the legal aid sector and these posts have boosted the numbers in 2021 and 2022 above.

²⁷ [diversity-data-pc-renewal-2020-21.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/diversity-data-pc-renewal-2020-21.pdf)

²⁸ Source: Law Society of Scotland

Other comparative data

	% women
All traineeships across Scotland in 2020/21	67%
Applicants to legal aid traineeships	64.50%
Profession as a whole	56%
Solicitors on criminal legal aid register	33%
All solicitor advocates	31%
Solicitor advocates (criminal rights of audience)	23%

One of the goals behind the Legal Aid Traineeship fund was to increase diversity in the legal aid sector.

DISABILITY

General population

The Scottish Household Survey 2019 shows that 15% of adults who lived in social housing were permanently sick or disabled. The equivalent among private renters and owner occupiers was 3% and 1%, respectively²⁹

Data from the 2011 Census shows that 19.6% of the population in Scotland have a long-term activity-limiting health problem or disability³⁰.

Disabled people less confident that everyone has access to the justice system³¹

- The Scottish Crime and Justice Survey estimates that 75% of adults were confident that the Scottish Justice System makes sure everyone has access to the justice system if they need it in 2019/20, increased from 70% in 2008/09 (but unchanged since 2018/19 - 76%).
- Confidence was lower for disabled people than non-disabled people (71% compared to 76%).

Solicitors

The Law Society's Profile of the Profession 2018 reported that 5% of respondents considered themselves to have a disability³².

Of those who considered themselves to have a disability: 37% had a long-term illness, disease or condition, 21% had a physical disability, 13% had stress and anxiety, 13% had deafness or partial hearing loss, 10% had a learning difficulty, e.g. dyslexia, 9% had another mental health condition. Fewer than ten respondents identified themselves as having another condition or disability, blindness or partial sight loss, development disorder, learning disability or preferred not to say. It is not anticipated that the proposals in the Bill will have any negative impact on those solicitors.

Diversity Data from 2020/21 Practising Certificate (PC) Renewal Reported³³:

Of the 9,387 Law Society members who answered the question on disability, 455 noted that they had an impairment (4.8%). This should be viewed as at least 4.8%, because nearly 8% of respondents selected 'Prefer not to say'. This aligns with the Law Society's general understanding of the profession garnered from the Profile of the Profession in 2018, where 5% of members noted a disability.

²⁹ [Scotland's People Annual Report: Key findings - 2019 \(www.gov.scot\)](https://www.gov.scot/publications/scotland-people-annual-report-2019/pages/key-findings-2019.aspx)

³⁰ [Health | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk/health/)

³¹ [Scottish Crime and Justice Survey 2018/19: main findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-crime-and-justice-survey-2018-19/pages/main-findings.aspx)

³² [Iss-pop-report-final-december-2018.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/iss-pop-report-final-december-2018.pdf)

³³ [diversity-data-pc-renewal-2020-21.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/diversity-data-pc-renewal-2020-21.pdf)

SEX

General population

The 2011 Census also showed that 48.5% of the Scottish population were male and 51.5% were female.

The Scottish Household Survey 2019 reported that there was a larger proportion of younger men than younger women, with 30% of men and 28% of women being aged 16 to 34. In the 35-59 age range these were 41% and 40% respectively. Those over 60 and over were reported as 29% male and 32% female³⁴.

Men more confident than women that everyone has access to the justice system³⁵

- The Scottish Crime and Justice Survey estimates that 75% of adults were confident that the Scottish justice system makes sure everyone has access to the justice system if they need it in 2019/20, increased from 70% in 2008/09 (but unchanged since 2018/19 - 76%).
- Confidence was higher for men than women (77% compared to 74%).

I can see how that reads, what are the other 42%, I've altered to better reflect the position.

Solicitors

The Law Society's Profile of the Profession 2018 also reported that 61% of respondents identified as female, 37% identified as male, 1% stated that they would prefer not to say their gender identity, and less than 1% identified as intersex, non-binary, or a different term.

The Law Society Diversity Data from 2020/21 Practising Certificate (PC) renewal reported that 45% of the Scottish solicitor profession were male and 55% were female³⁶

	Women (overall population)	Men (overall population)	Women under 30	Men under 30
BAME	61.7%	38.24%	72%	28%
White	56.7%	43.3%	68%	32%
Other	60%	40%	62%	38%
Prefer not to say	31%	69%	38%	62%
Total	55%	45%	67%	33%

³⁴ [Scotland's People Annual Report: Key findings - 2019 \(www.gov.scot\)](http://www.gov.scot)

³⁵ [Scottish Crime and Justice Survey 2018/19: main findings - gov.scot \(www.gov.scot\)](http://www.gov.scot)

³⁶ [diversity-data-pc-renewal-2020-21.pdf \(lawscot.org.uk\)](http://lawscot.org.uk)

LEGAL AID TRAINEESHIPS FUND: SUMMARY OF KEY DATA

Gender

	Total unique applicants to traineeship fund roles	Percentage	Traineeships in 2020/21 (comparator)
			Source trainee statistics
Female	290	64.58%	67%
Male	152	33.85%	33%
Non-binary	1	0.22%	NA
Prefer not to say	6	1.33%	NA

Advocates³⁷

Current			
Type	Gender	Count	%
Non-Practising	Female	78	28
Non-Practising	Male	201	72
	Total	279	
Practising	Female	123	28
Practising	Male	316	72
	Total	439	
Retired Member	Female	20	
Retired Member	Male	100	
Type		Count	
Non-Practising		279	
Practising		439	
Retired Member		120	
Members KCs			
Gender	Count		
Female	66		
Male	352		
Practising Members KCs			
Gender	Count	%	
Female	32	26	
Male	93		
	125		
Women in criminal law	36/97	37%	
Men in criminal law	61/97	63%	

³⁷ Source: The Faculty of Advocates membership statistics, as at December 2022.

PREGNANCY AND MATERNITY

General Population

There were 11,899 births registered in Scotland between 1 October and 31 December 2022³⁸.

Solicitors³⁹

The Law Society's Profile of the Profession 2018 found that women now make up a majority of the solicitor profession. The gender distribution within the profession, though, is uneven. Those on the route to qualification – LLB, DPLP, traineeship – are now disproportionately female. At the higher end of the profession, this imbalance inverts. Women make up fewer than 30% of partners in the Scottish legal profession and fewer than 30% of solicitor advocates. We know from our own research that this issue occurs in other legal professions in Scotland (under 30% of advocates are female; under 30% of Senators of the College of Justice are female). Similar imbalances exist in other UK jurisdictions. 75% of respondents felt that fewer women reaching senior positions was due to it being difficult to reach senior levels and have a family (n=2,063). 8% did not believe that there was an issue with comparatively few women reaching senior positions (n=225). Respondents were asked why they felt so many women leave the legal profession in their 30s and 40s, with maternity leave and part time working being a significant factor:



³⁸ [Births, Deaths and Other Vital Events - Quarterly Figures: Fourth Quarter | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/births-deaths-and-other-vital-events-quarterly-figures-fourth-quarter)

³⁹ [Iss-pop-report-final-december-2018.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/iss-pop-report-final-december-2018.pdf)

GENDER REASSIGNMENT

General population

As of May 2018, around 0.5% of the Scottish population (24,000 people) were estimated to be transgender. The Scottish Public Health Network Report on the Health Care Needs Assessment of Gender Identity Services suggests that 0.5% is the most often quoted likely prevalence of trans people.⁴⁰

Of the 1,160 self-selected trans people from Scotland who responded to the UK National LGBT Survey in 2017, 3.7% said that they had a GRC.⁴¹ However this proportion also includes non-binary respondents who may be less likely to apply for a GRC. The methodology used means respondents are drawn from non-representative sample of LGBT people across the UK, and therefore it is not possible to generalise these findings to the Scottish trans population as a whole.

Information held by NRS shows that around 30 people a year from Scotland obtain full GRCs.

Solicitors

The Law Society's Profile of the Profession 2018 found that eight respondents, fewer than 1%, identified as transgender.

⁴⁰ [Health Care Needs Assessment of Gender Identity Services \(scotphn.net\)](https://www.scotphn.net/Health-Care-Needs-Assessment-of-Gender-Identity-Services)

⁴¹ [National LGBT Survey: Research report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/research-data-and-analysis/publications/national-lgbt-survey-research-report)

SEXUAL ORIENTATION

General Population

Although the 2011 Census does gather data of those in same-sex civil partnerships, it did not ask about sexual orientation.

The Office for National Statistics provides the following estimates for Scotland in 2020⁴²:

Heterosexual or straight	95.4%
Gay or lesbian	2.0%
Bisexual	1.0%
Other	0.6%

Solicitors

The Law Society's Profile of the Profession 2018 reported 5% of respondents identified as Lesbian, gay, bisexual or other⁴³.

Diversity Data from 2020/21 Practising Certificate (PC) Renewal Report⁴⁴:

	PC Renewal	Aged 30 and under
Heterosexual / straight	91%	85.54%
Prefer not to say	4%	10.76%
Gay man	5%	1.83%
Gay woman / lesbian	5%	0.64%
Bisexual	5%	0.73%
Other	N/A	0.49%
LGBTQ+ total	5%	3.20%

Total solicitor population vs those aged under 30

	PC Renewal	Aged 30 and under
Heterosexual / straight	85.54%	87.73% (+2.19)
Prefer not to say	10.76%	6.34% (-4.42)
Gay man	1.83%	2.73% (+0.9)
Gay woman / lesbian	0.64%	1.05% (+0.41)
Bisexual	0.73%	2.03% (+0.3)
Other	0.49%	0.12% (-0.37)

⁴² [Sexual orientation, UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/people-in-the-uk/population-and-demography/sexual-orientation)

⁴³ [lss-pop-report-final-december-2018.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/lss-pop-report-final-december-2018.pdf)

⁴⁴ [diversity-data-pc-renewal-2020-21.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/diversity-data-pc-renewal-2020-21.pdf)

RACE

General Population

Data from the 2011 Census relating to ethnicity in the Scottish population found that 91.8% of people identified as 'White: Scottish' or 'White: Other British', 4.2% of people identified as 'Polish, Irish, Gypsy/Traveller' or 'White: Other'. 2.7% of Scotland's population identified as 'Asian, Asian Scottish' or 'Asian British'. 'African Caribbean or Black' groups made up just over 1% of Scotland's population⁴⁵.

Solicitors

The Law Society's Profile of the Profession 2018 found 84.6% of respondents described their ethnic group as White – Scottish. 7.4% of survey respondents described their ethnic group as White – Other British. 1.7% of survey respondents described their ethnic group as Asian. Less than 1% of respondents identified their ethnic group as one of the remaining categories. This suggests there is an under-representation of BAME (Black, Asian and minority ethnic) groups in the legal profession. It is not anticipated that this proposal will have any negative impact on those solicitors.

Total solicitor population vs age analysis⁴⁶

Ethnic Group	% total solicitor population	% aged 30 and under
White Scottish / White British	86.47%	89%
Prefer not to say	7.13%	2.91%
Other	1.48%	1.57%
White Irish	1.24%	0.99%
Pakistani British, Pakistani Scottish or Pakistani	0.95%	1.40%
Mixed or multiple ethnic groups	0.74%	1.05%
Asian British, Asian Scottish or Asian	0.43%	0.70%
Polish	0.30%	0.81%
Jewish	0.29%	0.23%
Indian British, Indian Scottish or Indian	0.29%	0.35%
Chinese	0.26%	0.47%
Sikh	0.16%	0.17%
African British, African Scottish or African	0.13%	-
Bangladeshi British, Bangladeshi Scottish or Bangladeshi	0.06%	0.17%
Arab British, Arab Scottish or Arab	0.05%	0.12%
African – not specified	0.01%	-

⁴⁵ [Ethnicity | Scotland's Census \(scotlandscensus.gov.uk\)](https://www.scotlandscensus.gov.uk/ethnicity)

⁴⁶ [diversity-data-pc-renewal-2020-21.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/diversity-data-pc-renewal-2020-21.pdf)

Black British, Black Scottish or Black	0.01%	0.06%
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Gender and ethnicity⁴⁷

	Women (overall population)	Men (overall population)	Women under 30	Men under 30
BAME	61.7%	38.24%	72%	28%
White	56.7%	43.3%	68%	32%
Other	60%	40%	62%	38%
Prefer not to say	31%	69%	38%	62%
Total	55%	45%	67%	33%

⁴⁷ [diversity-data-pc-renewal-2020-21.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/diversity-data-pc-renewal-2020-21.pdf)

RELIGION OR BELIEF

General Population

The analysis of religion in the 2011 Census shows that the proportion of the population identifying with various religions as: 32.4% Church of Scotland; 15.9% Roman Catholic; 5.5% Other Christian; 0.2% Buddhist; 0.3% Hindu; 0.1% Jewish; 1.4% Muslim; 0.2% Sikh; 0.3% Another Religion; 36.7% No Religion; 7.0% Not Answered.

Solicitors

The Law Society's Profile of the Profession 2018 of the legal profession showed that 49% consider they had no religion/faith; 45% reported themselves to be Christian (25% Church of Scotland, 14% Roman Catholic, 6% other Christian); 1% reported being Muslim, and less than 1% of respondents described themselves as Jewish, Sikh, Hindu or Buddhist.

This suggests that solicitors are more likely to consider they have no religion than the general population, and slightly less likely to consider themselves Christian. It is not anticipated that this proposal will have any negative impact on those solicitors.

Diversity Data from 2020/21 Practising Certificate (PC) Renewal Reported:

Scottish census 2011 vs solicitor population 2020/21 and solicitor population aged under 30

	Scottish census 2011	% solicitor population	% aged 30 and under
Christianity	53.8%	37.55% (-16.25%)	33.7%
- Church of Scotland	32.4%	19.25% (-13.10%)	11.22%
- Roman Catholic	15.9%	13.41% (-2.5%)	15%
- Other Christian	5.5%	4.71% (-0.7%)	3.7%
Islam	1.4%	1.33% (-0.01%)	2.1%
Hinduism	0.3%	0.05% (-0.25%)	-
Buddhism	0.2%	0.13% (-0.07%)	-
Sikhism	0.2%	0.26%	0.29%
Judaism	0.1%	0.42% (+0.3%)	0.11%
No religion	36.7%	46.50% (+9.80%)	59.98%
- None	-	38.62%	47.7%
- Atheist	-	5.33%	8.08%
- Agnostic	-	2.81%	4.2%
Other	0.3%	0.77% (+0.47%_)	0.3%

Religion not stated/prefer not to say	7%	12.83% (5.8%)	7.03%
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Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Legal services contribute to the social value of Scotland. There is significant diversity in the types of legal services people access, often in times of distress or vulnerability. Legal services support individual's wellbeing, promote their continued contribution to society and help to prevent the escalation of problems.

Legal services regulation contributes to the creation of a legal framework that ensures that disabled persons are not discriminated against. Section 3(3) of the Bill sets out that regulators must encourage equal opportunities (as defined in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	No differential impacts have been identified for the protected characteristic of age.
Advancing equality of opportunity	X			<p>The business structure framework in respect of licenced legal services providers (alternative business structures) will allow increased access to finance for firms alongside increased flexibility to provide a combination of professional services. It will facilitate the hire and retention of high quality non-legal staff through the ability to reward all staff on the same basis. It is anticipated that these changes will lead to innovation and price reductions for the consumer. It is anticipated this will benefit, regardless of age.</p> <p>Measures in respect of regulatory waivers may support the relaxation of rules which may benefit those with caring responsibilities, also benefiting those cared for, regulatory wavers could be used in this way to trial a new approach before making it permanent if successful.</p> <p>Younger people may benefit from regulation that provides for increased access to legal services linked to technology, and which may be supported though innovation which may stem from provisions around regulatory waivers, such as online platforms or alternative providers. However, older people may be less likely to use digital platforms or have limited access to new technologies, which could disadvantage them. Therefore, it is important that the legislation is proportionate and flexible and allows for consumer choice, the Bill seeks to deliver that.</p>

Promoting good relations among and between different age groups			X	No differential impacts have been identified for the protected characteristic of age.
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Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	No differential impacts have been identified for the protected characteristic of disability.
Advancing equality of opportunity	X			<p>Measures in respect of regulatory waivers may support the relaxation of rules which may benefit those with caring responsibilities, also benefiting those cared for.</p> <p>The Bill seeks to promote innovation and technology, and increased competition that will deliver improved access to legal services may help disabled persons to access disability-sensitive and affordable legal services.</p> <p>Regulation should ensure that legal professionals are trained on disability-related issues, and this is likely to improve the quality of services provided to disabled individuals. The Bill removes restrictions preventing charities, law centres and citizens advice bodies from directly employing solicitors to provide certain legal services to some of the country's most vulnerable citizens.</p>
Promoting good relations among and between disabled and non-disabled people			X	No differential impacts have been identified for the protected characteristic of disability.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of sex.
Advancing equality of opportunity	X			Measures in respect of regulatory waivers may support the relaxation of rules which may benefit those with caring responsibilities, regardless of gender. Legal business regulation (entity regulation) seeks to ensure legal regulators can provide clearer guidelines for promoting diversity and inclusion, which may help reduce any gender based prejudices or biases.
Promoting good relations between men and women			X	No differential impacts have been identified for the protected characteristic of gender.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of pregnancy and maternity.
Advancing equality of opportunity	X			Measures in respect of regulatory waivers may support the relaxation of rules which may benefit those with caring responsibilities.
Promoting good relations			X	No differential impacts have been identified for the protected characteristic of pregnancy and maternity.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of gender reassignment.
Advancing equality of opportunity	X			Legal business regulation (entity regulation) seeks to ensure legal regulators can provide clearer guidelines for promoting diversity and inclusion, which may help reduce any gender based prejudices or biases.
Promoting good relations			X	No differential impacts have been identified for the protected characteristic of gender reassignment.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of sexual orientation.
Advancing equality of opportunity	X			Legal business regulation (entity regulation) seeks to ensure legal regulators can provide clearer guidelines for promoting diversity and inclusion, which may help reduce any sexual orientation based prejudices or biases.
Promoting good relations			X	No differential impacts have been identified for the protected characteristic of sexual orientation.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of race.
Advancing equality of opportunity	X			<p>Legal services regulation is a crucial aspect of ensuring access to justice and quality legal services for all members of society, regardless of their race. However, the way in which legal services are regulated can have a significant impact on racial equality. For example, studies have shown that people from Black, Asian, and Minority Ethnic (BAME) backgrounds face significant barriers in accessing legal services due to a range of factors, including socio-economic disadvantage, language barriers, and discrimination. Therefore, legal services regulation must take steps to address these barriers and ensure that everyone, regardless of race, can access justice.</p> <p>Moreover, there is a need to ensure that legal services regulatory bodies are diverse and representative of the communities they serve, including Black, Asian, and Minority Ethnic (BAME) communities. This would help to ensure that the concerns and experiences of these communities are adequately considered and addressed within legal services regulation. Overall, legal services regulation can have a positive impact on racial equality if it is designed to address the barriers faced by Black, Asian, and Minority Ethnic (BAME) communities and ensure that everyone can access justice equally. There regulatory objectives seek to promote an independent, strong and diverse legal profession, and that consumers should have access to a range of legal services that are affordable and suited to their needs.</p>

Promoting good race relations			X	No differential impacts have been identified for the protected characteristic of race.
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Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of religion or belief.
Advancing equality of opportunity	X			Legal business regulation (entity regulation) seeks to ensure legal regulators can provide clearer guidelines for promoting diversity and inclusion, which may help reduce any religion or belief based prejudices or biases.
Promoting good relations			X	No differential impacts have been identified for the protected characteristic of religion or belief.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership ⁴⁸	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	No differential impacts have been identified for the protected characteristic of marriage and civil partnership.

⁴⁸ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

If, following the impact analysis, you think you have identified any unlawful discrimination – direct or indirect - you must consider and set out what action will be undertaken to mitigate the negative impact. You will need to consult your legal team in SGLD at this point if you have not already done so.

Have positive or negative impacts been identified for any of the equality groups?	Overall the legislation is anticipated to have a positive impact on the equality groups identified.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁴⁹ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

The EQIA process has helped to strengthen our commitment to reform the regulation of legal services. We focused on evidence and analysis from the consultation held in 2021, and related analytical work, which found that groups most likely to be positively affected include:

- Consumers of legal services, which may account for a large share of the population, and a subset of those who may raise legal complaints,
- Legal professionals
- Unregulated legal providers of legal services.

⁴⁹ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for Regulation of Legal Services (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Denise Swanson

Position: Deputy Director

Authorisation date:26/4/23



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