INTRODUCTION

1. This supplementary Financial Memorandum has been prepared by the Scottish Government to accompany the Legal Services (Scotland) Bill following Stage 2 consideration of the Bill. It has been produced in accordance with Rule 9.7.8B of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Explanatory Notes and other accompanying documents published to accompany the Bill (As Introduced) (SP Bill 32A-EN).

2. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new provisions included in the Bill following Stage 2 amendments. The majority of the amendments are technical and do not significantly affect the assumptions in the original Financial Memorandum. This document therefore only addresses the amendments relating to:

- the enhanced role for the Lord President;
- financial penalties;
- the regulation of non-lawyer will writers;
- complaints;
- citizens advice bodies;
- lay representation in court; and
- compensation arrangements for licensed providers and the Guarantee Fund.

ENHANCED ROLE FOR THE LORD PRESIDENT

3. The Stage 2 amendments to the Bill considerably enhanced the Lord President’s role.

- In respect of approved regulators there is amendment to:
  - section 6 requiring the Lord President’s consent before approval of an approved regulator by the Scottish Ministers (whether or not subject to conditions) and before any change in the conditions imposed (if any);
This document relates to the Legal Services (Scotland) Bill as amended at Stage 2 (SP Bill 30A)

- section 8 requiring the Lord President’s consent before approval by the Scottish Ministers of a regulatory scheme and of any amendment to a regulatory scheme;
- section 9 requiring the Lord President’s consent before the Scottish Ministers make further provision about regulatory conflicts;
- section 22 requiring the Lord President’s consent before the Scottish Ministers make further provision about the internal governance arrangements of approved regulators;
- section 26 requiring the Lord President’s consent before the Scottish Ministers make further provision about conferring additional functions on approved regulators; and
- section 29 and schedule 3 requiring the Lord President’s consent before the Scottish Ministers set performance targets for, direct or censure the approved regulator, and amend or rescind their authorisation.

• In respect of licensed providers amendment to:
  - sections 39 to 41 requiring the Lord President’s consent before the Scottish Ministers make regulations making further provision about Heads of Legal Services, Heads of Practice, and Practice Committees;
  - section 52A requiring the Lord President’s consent before the Scottish Ministers amend the threshold for exemptible investors; and
  - section 99A requiring the Lord President’s consent before the Scottish Ministers amend or rescind the requirement for majority solicitor and regulated professional ownership.

• In respect of approving bodies for confirmation agents, there is amendment to section 74 requiring the Lord President’s consent before certification and before emendation of conditions (if any) by the Scottish Ministers.

Costs on the Scottish Courts Service

4. Only the Scottish Courts Service is affected by these amendments. The Scottish Courts Service has indicated that the enhanced role will have no significant resource implications.

FINANCIAL SANCTIONS

5. Section 15(3) was amended so that financial penalties imposed by approved regulators would not be paid to the approved regulator, but to the Scottish Ministers. A similar amendment was made to section 76(3) and occurs in section 81E(3) in respect of financial penalties imposed by approving bodies on confirmation agents and non-lawyer will writers respectively.

6. It is not possible to estimate how often financial penalties will be imposed or what monies will be paid to the Scottish Ministers. Any such penalties will be paid into the Scottish Consolidated Fund.
REGULATION OF NON-LAWYER WILL WRITERS

7. Part 3 of the Bill was amended by the insertion of Chapter 2 which provides for the regulation of non-lawyer will writers.

Costs on the Scottish Government

8. Financial implications for the Scottish Ministers are expected to be minimal. As with the proposed regulatory scheme for confirmation agents, the role of the Scottish Ministers will be to assess applications from potential regulators (known as approving bodies), and to exercise continuing oversight over those approving bodies.

9. Detailed estimated costs can be found in tables 1 and 2.

Table 1 – Estimated cost per annum of processing applications

<table>
<thead>
<tr>
<th>1-2 applications</th>
<th>3-4 applications</th>
<th>5-6 applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 x A3 (10%)</td>
<td>1 x A3 (20%)</td>
<td>1 x A3 (25%)</td>
</tr>
<tr>
<td>£2,150</td>
<td>£4,300</td>
<td>£5,375</td>
</tr>
<tr>
<td>1 x B1 (20%)</td>
<td>1 x B1 (24%)</td>
<td>1 x B1 (28%)</td>
</tr>
<tr>
<td>£6,000</td>
<td>£7,200</td>
<td>£8,400</td>
</tr>
<tr>
<td>1 x B2 (25%)</td>
<td>1 x B2 (37.5%)</td>
<td>1 x B2 (50%)</td>
</tr>
<tr>
<td>£9,021</td>
<td>£13,532</td>
<td>£18,042</td>
</tr>
<tr>
<td>1 x C1 (3%)</td>
<td>1 x C1 (4.5%)</td>
<td>1 x C1 (6%)</td>
</tr>
<tr>
<td>£1,818</td>
<td>£2,727</td>
<td>£3,636</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Total</strong></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td><strong>£18,989</strong></td>
<td><strong>£27,759</strong></td>
<td><strong>£35,453</strong></td>
</tr>
</tbody>
</table>

Table 2 – Estimated cost per annum of ongoing monitoring and oversight

<table>
<thead>
<tr>
<th>1-2 regulators</th>
<th>3-4 regulators</th>
<th>5-6 regulators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 x A3 (5%)</td>
<td>1 x A3 (7.5%)</td>
<td>1 x A3 (10%)</td>
</tr>
<tr>
<td>£1,075</td>
<td>£1,613</td>
<td>£2,150</td>
</tr>
<tr>
<td>1 x B1 (10%)</td>
<td>1 x B1 (20%)</td>
<td>1 x B1 (30%)</td>
</tr>
<tr>
<td>£3,000</td>
<td>£6,000</td>
<td>£9,000</td>
</tr>
<tr>
<td>1 x B2 (20%)</td>
<td>1 x B2 (26%)</td>
<td>1 x B2 (32%)</td>
</tr>
<tr>
<td>£7,300</td>
<td>£9,490</td>
<td>£11,680</td>
</tr>
<tr>
<td>1 x C1 (3%)</td>
<td>1 x C1 (3%)</td>
<td>1 x C1 (3%)</td>
</tr>
<tr>
<td>£1,818</td>
<td>£1,818</td>
<td>£1,818</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Total</strong></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td><strong>£13,193</strong></td>
<td><strong>£18,921</strong></td>
<td><strong>£24,648</strong></td>
</tr>
</tbody>
</table>

10. The initial assessment of applications from potential approving bodies is estimated to take 1-2 years, with resulting staff costs set out in figure 1. The costs for ongoing monitoring of the approving bodies are set out in figure 2. These are based on the estimates in the financial memorandum for the Bill as introduced in relation to approving bodies for confirmation agents. The costs are based on the Scottish Government pay scales for August 2009, with a mid-range figure taken for each grade and band with 33% added for pensions and national insurance.

11. In summary, costs for processing applications will range from £18,989 over one year to £70,906 over two years, depending on the number and timing of applications. Ongoing costs
will range from £13,193 to £24,648 per annum. However, based on the number of existing bodies which are likely to apply, we estimate that there will be 3-4 applications over a one year period, costing around £27,759 in total, with an ongoing cost of around £18,921 per annum. We consider that these costs can be met within the existing Legal System Division budget.

**Costs on local authorities**

12. None.

**Costs on other bodies, individuals and businesses**

13. Any body seeking to regulate non-lawyer will writers will incur the costs of an application to the Scottish Ministers and, if successful, the regulation of non-lawyer will writers. Three existing professional bodies have indicated interest:

- The Scottish Society of Will Writers (part of the Society of Will Writers).
- The Institute of Scottish Professional Willwriters (part of the Institute of Professional Willwriters).
- The Fellowship of Profession Willwriters and Probate Practitioners.

These bodies already bear the costs of regulation of their members and those costs are met from the subscriptions paid by the individual will writers. It is unlikely that, if they become approving bodies, there will be a significant rise in the cost of the individual subscription fee.

14. However, there will be non-lawyer will writers who are not members of any of the professional bodies. In order to continue to offer will writing services, any such will writer will have to become a member of an approving body and this will involve the payment of a subscription fee.

**Potential payments to the Scottish Government**

15. Under section 81B(6), the Scottish Ministers have the power to impose a fee on applicants for the position of approving body. However, it is not the intent of the Scottish Government to charge such bodies in the first instance – the power will only be used if required to protect public funds should the number of applicants or the resources required to administer the process be higher than expected. If such fees were to be charged, they would only be set at such a level to recover the administrative costs of processing applications.

16. Any fees will be paid into the Scottish Consolidated Fund.

**COMPLAINTS**

17. Section 83 of the Bill amends the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) by making provision for complaints about confirmation agents and, as a result of Stage 2 amendments, non-lawyer will writers. New section 57H of the 2007 Act has been amended to require non-lawyer will writers, in addition to confirmation agents, to pay the annual
general levy and (if arising) a complaints levy to the Scottish Legal Complaints Commission (“the SLCC”).

Costs on the Scottish Government and local authorities

18. None.

Costs on other bodies, individuals and businesses

19. The levies will be an additional financial burden on non-lawyer will writers. It is not known at present at what levels the annual general levy will be set by the SLCC. The complaints levy, which only arises if there is a complaint, is set out in the following table.

<table>
<thead>
<tr>
<th>Mediation levy</th>
<th>£0</th>
</tr>
</thead>
<tbody>
<tr>
<td>No complaint upheld</td>
<td>£0</td>
</tr>
<tr>
<td>Complaint accepted - first settlement</td>
<td>£500</td>
</tr>
<tr>
<td>Complaint accepted - second and further settlements</td>
<td>£700</td>
</tr>
<tr>
<td>Formal determination - first</td>
<td>£800</td>
</tr>
<tr>
<td>Formal determination - second</td>
<td>£1,200</td>
</tr>
<tr>
<td>Formal determination - third and further determination</td>
<td>£2,000</td>
</tr>
</tbody>
</table>

20. As far as the SLCC is concerned, the cost of investigation of complaints against will writers will be met from the levies and not from the public purse.

CITIZENS ADVICE BODIES

21. Section 91A of the Bill amends section 26 of the Solicitors (Scotland) Act 1980 to make provision for citizens advice bodies to be able to employ solicitors to give legal advice to third parties.

Costs on the Scottish Government and local authorities

22. None.

Costs on other bodies, individuals and businesses

23. Any citizens advice body employing a solicitor will have to bear the cost of that employment. However, the provision is entirely permissive, and simply allows such bodies to employ solicitors if they so choose.
LAY REPRESENTATION IN COURT

24. Section 91B of the Bill inserts a new section into the Court of Session Act 1988 to make provision for rules to be made allowing lay representatives to make oral submissions in the Court of Session under certain circumstances. Section 91C amends section 32 of the Sheriff Courts (Scotland) Act 1971 to allow similar oral submissions from lay representatives in the sheriff courts.

Costs

25. There are no significant resource or financial implications for the Scottish Government nor any other authority, body, business, or individual.

GUARANTEE FUND

26. Sections 91D to 91F amend section 43 of and Schedule 3 to the Solicitors (Scotland) Act 1980 (“the 1980 Act”) and make provision relating to the Scottish Solicitors Guarantee Fund (“the Guarantee Fund”). Section 91D amends section 43 of the 1980 Act and provides that the Guarantee Fund may be used by all licensed providers. Section 91E amends Schedule 3 to the 1980 Act, and provides for contributions to be made to the Guarantee Fund by all licensed providers. Section 91F amends Schedule 3 to the 1980 Act and provides for a cap on each individual grant made from the Guarantee Fund.

Costs on the Scottish Government and local authorities

27. None.

Costs on other bodies, individuals and businesses

28. Each licensed provider will be required to pay into the Guarantee Fund. The contribution will be set at entity level. The Law Society of Scotland will set various scales for payment under the provisions of section 91E which amends paragraph 1 of Schedule 3 to the 1980 Act. The scales will be set considering all relevant factors (such as size of the entity and turnover) including the number of solicitors that are investors in or employees of the licensed provider. It is not known at present at what levels the scales will be set.

29. The cap on any single grant made from the Guarantee Fund has possible financial implications for the Law Society, all principals who pay into the fund, incorporated practices, and licensed providers. Without the cap, it would be possible for a large claim or a number of large claims to exceed the amount of money in the fund and the cover provided by stop-loss insurance. Should this unlikely event occur, these individuals and entities would be required to make up any shortfall in the grant made. This provision considerably reduces this risk.
LEGAL SERVICES (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM