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Dear Convener

Regulation of Legal Services (Scotland) Bill

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

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

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

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot



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

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

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

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

The provisions identified by the senior judiciary as being of concern are those which introduce new powers and duties in respect of the regulation of legal services, and place certain functions on Scottish Ministers in their operation¹. We are considering amendments which would maintain these functions but transfer the responsibility for delivery of certain of those functions to the Lord President as the head of the judiciary. In the consideration of any such changes, we are also seeking to maintain the transparency and accountability which is integral to their operation.

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

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



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

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

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

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

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

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

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

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

SIOBHIAN BROWN

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