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The Scottish Parliament
Edinburgh
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29 November 2023

Dear Convener

Regulation of Legal Services (Scotland) Bill

Thank you for your correspondence of the 24 November 2023 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, placing the public and consumer interest at its heart. It will promote competition and innovation while improving the transparency and accountability of legal regulation and the legal complaints system in Scotland.

The broad provisions of the Bill have clear benefits which the Committee has heard in its evidence sessions and there is support for the general principles in respect of the improvements that would be made to legal regulation in Scotland.

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 during the Bill's passage through Parliament. We know these parties often have differing views on the regulation of legal services which is why we want to ensure it strikes the right balance between the various interests.

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Following introduction of the Bill and having carefully considered the responses to the committee's call for views published on 24 August we acknowledged the concerns raised in respect of the role placed on Scottish Ministers within the Bill. Whilst these relevant provisions are of course only part of the Bill, we wanted to address those concerns and so publicly stated we would bring forward amendments at Stage 2 and would work with stakeholders, including the senior judiciary, to ensure they meet expectations.

The Scottish Government continue to meet with stakeholders including the senior judiciary and their officials in seeking to build consensus around the best approach to amend the Bill and as set out in my correspondence of the 27th of October, we continue to have constructive engagement and discussions in relation to amendments of the Bill. We are also interested to hear the views of those giving evidence to the Committee as well as the views of the Committee itself in its Stage 1 report.

Whilst the actual amendments will only be finalised when those discussions have concluded, the attached annex sets out the consideration to date and our intentions and I hope this will aid the Committee at this stage.

We have also considered the report of the Delegated Powers and Law Reform Committee, and we are taking into account their recommendations in respect of our discussions with stakeholders.

We continue to work with stakeholders on the detail of the changes being proposed, we expect to reach an agreed position by early next year and I will update the Committee further ahead of tabling amendments at Stage 2.

I am grateful for the Committee's consideration of the Bill to date and the Committee's important Stage 1 scrutiny process continues to inform us in the development of amendments as will the final recommendations of the Committee. I hope this further detail is helpful for the Committee and look forward to the session next week.

SIOBHIAN BROWN

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Section 5

Section 5 allows for the regulatory objectives and professional principles to be amended to update them to reflect regulatory best practice. It was included to the Bill in response to calls from stakeholders for a permissive and enabling framework of primary legislation that would be flexible enough to respond to future changes in the legal services market by allowing future amendment through secondary legislation.

The Scottish Government will however accept the recommendation of the Delegated Powers and Law Reform (DPLR) Committee that the Bill be amended to remove section 5, and will bring forward an amendment to that effect at Stage 2.

Section 8

The creation of a category system for regulators creates an inherent requirement for flexibility to respond to any changes, or proposed changes, to how a regulator operates or in its membership numbers and is intended to futureproof the regulatory framework.

The Scottish Government acknowledges that the DPLR Committee has recommended that the Bill be amended to remove section 8 from the Bill.

Section 8(5)(b), (c) and (d) are necessary to ensure the Bill accurately reflects any changes to the regulatory framework in respect of new accredited regulators receiving approval, any regulator ceasing to operate or a change in a regulator's name, as recently evidenced with the Association of Construction Attorneys' name change.

We will bring forward an amendment to narrow the scope of section 8(5)(a) so it applies only to allow the recategorisation of new accredited regulators and to include an additional safeguard in respect of a requirement for the Lord President's consent before any such change may be made.

The Scottish Government continues to have constructive engagement with stakeholders in respect of this provision and through those discussions we expect to reach an agreed position.

Section 13 and 16

Sections 13 and 16 require a category 1 and 2 regulator to publish an annual report on the exercise of their regulatory functions. The report must include, among other things, information demonstrating how the regulator is complying with the regulatory objectives and a statement on the strategic priorities for the next reporting year. We will amend the Bill to include an additional requirement for those regulators to report to the Lord President.

Section 19 and 20

This Bill is designed to increase the transparency and accountability of legal regulation. Sections 19 and 20 provide an important mechanism so that there is a process for review of

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regulatory performance if concerns are raised about a regulator not upholding the regulatory objectives or acting in the public interest. The Scottish Government are having active discussions with the office of the Lord President in respect of a review function sitting with the Lord President and expect to reach an agreed position.

Section 29

The intention behind Chapter 3 of Part 1 of the Bill is to allow a route for new regulatory bodies to enter the legal services sector and for new types of practitioners to provide legal services in Scotland if this is deemed to be appropriate. This is done by replicating and expanding the relevant provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 which requires approval from both the Lord President and Scottish Ministers for a new body to become a legal services regulator.

The Scottish Government will bring forward an amendment to the effect that it would be the responsibility of the Lord President alone to consider any application by bodies wishing to enter the legal services sector as a new regulator.

Section 41

The Bill adopts the same position of the Legal Services (Scotland) Act 2010 which requires the agreement of both the Scottish Ministers and the Lord President on the rules for authorised legal businesses. Having listened to the views of stakeholders, the Scottish Government will table an amendment at Stage 2 so that this function is exercised solely by the Lord President.

Sections 35 and 49

Section 35 is specifically intended to address the possibility that any new accredited regulator ceases to regulate by surrendering its acquired rights (section 31), having its acquired rights revoked (section 34) or for any other unanticipated circumstance. The introduction of an ability of a body to surrender its acquired rights, or for those rights to be revoked, necessitates a power for action to be taken to ensure that body's members may continue to provide legal services to their clients and continue to be regulated.

Similarly, the principle of section 49 was included as a part of the system of licencing for legal businesses (entity regulation) to create an offence for legal businesses to operate without authorisation. In the event that something happens to interfere with a category 1 regulator's ability to operate, there requires to be some mechanism to ensure that legal businesses are not committing an offence if they continue to provide legal services.

For the reasons set out above, we consider that it remains important to have some mechanism in place for action to be taken in certain circumstances to ensure that there is no interruption in the legal services provision by practitioners whose regulator loses or surrenders its functions.

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We are having active discussions with the office of the Lord President to explore the most appropriate approach and expect to reach an agreed position.

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