



The Rt Hon Lord Carloway
Lord President

Parliament House
Edinburgh, EH1 1RQ

19 January 2024

Ms Kaukab Stewart MSP
Convener Equalities, Human Rights
and Civil Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Convener

**REGULATION OF LEGAL SERVICES (SCOTLAND) BILL – PROPOSALS
TO AMEND THE BILL**

I am writing to provide the Committee with an update, from the perspective of the senior judiciary, on the Scottish Government's proposals to amend the Regulation of Legal Services (Scotland) Bill.

As you are aware from the evidence which the Lord Justice Clerk (Lady Dorrian) and Lord Ericht provided the Committee on 28 November, the senior judiciary have seen some high level options papers on how the Scottish Government may amend the Bill. We were sent two further papers, one on 4 December and a supplementary one on 15 December.

Those papers have been considered by a Judicial Working Group, which I convened to consider this Bill. It consists of 4 senators and is chaired by the Lord Justice Clerk. The members of this group carry out this work alongside their judicial court commitments. Given the significance of the constitutional concerns which the senior judiciary have with this Bill, it is very important that these proposals are carefully considered.

Whilst progress has been made on the Scottish Government's proposals to amend sections 5, 8, 29 and 41 of the Bill, there are some outstanding points that need to be addressed before the senior judiciary can advise if we are content, in principle, with these proposals. I would hope that those matters could be easily addressed.

Further work is needed on sections 19, 20 and schedule 2 before the senior judiciary can provide a view on whether we would be content with a model to give functions to the Lord President to review the performance of regulators. If functions do need to be given to anyone to review performance, it is our view that is only appropriate for those to be given to the Lord President.

Based on the information which has been provided to us so far, we are not convinced that it is necessary for the Lord President to be given functions to regulate the members of regulators directly, or to set up a new regulator, under sections 35 and 49 of the Bill. We have also provided some suggestions for the Scottish Government to consider in relation to the right of appeal to the Inner House, which section 58 of the Bill seeks to remove. On all of these matters, we will consider any further information which is provided to us by the Scottish Government.

On matters as serious as this, it is essential that the senior judiciary can assess how the proposed law is intended to work and that they know exactly what functions may be given to the Lord President. To that end, I would echo what the Lord Justice Clerk said when she attended Committee, that ultimately the senior judiciary will need to see draft amendments, with sufficient time for consideration, before any assurance can be given that the concerns we have with the Bill have been alleviated.

Whilst it is regrettable that we are in the position of having to consider matters as serious as this at stage 1 of a Bill, the senior judiciary will continue to engage constructively with the Scottish Government.

Yours sincerely

Lord Carloway