

# **REGULATION OF LEGAL SERVICES (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Regulation of Legal Services Regulation of Legal Services (Scotland) Bill, introduced in the Scottish Parliament on 20 April 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 25–EN);
  - a Policy Memorandum (SP Bill 25–PM);
  - a Delegated Powers Memorandum (SP Bill 25–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 25–LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **THE BILL**

#### **Background**

4. In December 2015, the Law Society of Scotland submitted a paper entitled 'The Solicitors (Scotland) Act 1980 Case for Change'<sup>1</sup> 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.

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<sup>1</sup> [The Solicitors \(Scotland\) Act 1980. The case for change](#)

5. In 2016, the Scottish Legal Complaints Commission published a paper setting out its priorities for reform.<sup>2</sup> In which it 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 Scottish Legal Complaints Commission sought that a ‘framework’ Act be introduced, which would not prescribe administrative processes in primary legislation.

6. 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 Robertson. In October 2018, ‘Fit for the Future – the Report of the Independent Review of Legal Services Regulation in Scotland’<sup>3</sup> was published. The ‘Robertson 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.

7. The Scottish Government response to the Robertson report was published in June 2019.<sup>4</sup> 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.

## **Consultation**

8. The public consultation set out three possible models for change – one based on the primary recommendation from the Robertson Review, and two alternatives. All options focus on the way in which legal services are regulated in Scotland, and the operation of the complaints process. The consultation sought views on these different options. 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.

9. 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.

10. 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:

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<sup>2</sup> [Reimagine regulation: SLCC priorities for a consultation on legal services regulation.pdf \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk/reimagine-regulation-slcc-priorities-for-a-consultation-on-legal-services-regulation.pdf)

<sup>3</sup> [Legal services regulation: independent report - gov.scot \(www.gov.scot\)](https://www.gov.scot/legal-services-regulation-independent-report)

<sup>4</sup> [Independent review of legal services regulation in Scotland: our response - gov.scot \(www.gov.scot\)](https://www.gov.scot/independent-review-of-legal-services-regulation-in-scotland-our-response)

*This document relates to the Regulation of Legal Services (Scotland) Bill (SP Bill 25) as introduced in the Scottish Parliament on 20 April 2023*

- The Law Society of Scotland (the Law Society / LSoS)
- The Scottish Legal Complaints Commission (SLCC)
- The Faculty of Advocates (the Faculty / FoA)
- The Association of Commercial Attorneys (ACA)
- Which?
- The Competition and Markets Authority (CMA)
- Citizens Advice Scotland (CAS)
- Scottish Legal Complaints Commission Consumer Panel

11. The responses to the consultation may be broken down by 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%

## **The current regulatory framework**

### ***The Lord President of the Court of Session***

12. The Lord President of the Court of Session is the head of the Judiciary in Scotland. The Lord President has responsibilities in relation to the regulation of the legal profession and has a regulatory function in relation to the Scottish Legal Complaints Commission ('the SLCC').<sup>5</sup>

13. The Lord President has oversight for prescribing the criteria and procedure for admission to the legal professions, the approval of changes to practice rules in relation to the legal professions and an overarching role in the regulatory framework.

### ***The Law Society of Scotland ("Law Society")***

14. The Law Society's membership comprises largely of solicitors and solicitor-advocates. The independent Regulatory Committee of the Law Society is accountable to, but independent of the Law Society's Council (its governing body). The establishment of an independent Regulatory Committee was a requirement of the Legal Services (Scotland) Act 2010 ("the 2010 Act") and exercises the Council's regulatory functions as set out in section 3F of the Solicitors (Scotland) Act 1980 ("the 1980 Act"). The Council must ensure its regulatory functions are exercised independently and properly, including with a view to achieving public confidence.

15. The 1980 Act sets out that the Law Society has statutory responsibility for the promotion of the interests of the solicitor profession in Scotland and the interests of the public in relation to that profession.

### ***The Scottish Solicitors' Discipline Tribunal ("SSDT")***

16. The SSDT is an independent body which deals with serious disciplinary issues that arise within the Scottish legal profession. As a formal judicial body, the SSDT is constituted under the provisions of the 1980 Act.<sup>6</sup> The Law Society is responsible for investigating cases of misconduct against solicitors and other legal professionals that it regulates and can decide to prosecute more serious cases of professional misconduct before the SSDT.

### ***The Faculty of Advocates ("Faculty")***

17. The Court of Session has delegated responsibility for the regulation of advocates to the Faculty. Professional rules for advocates must be approved by the Lord President and cannot be revoked unless the Lord President has given approval. The Lord President retains an important

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<sup>5</sup> The SLCC must consult with the Lord President on appointing members and on rule changes to practice and procedure. The Legal Profession and Legal Aid (Scotland) Act 2007 also sets out that the Lord President may, by written notice, remove the chairing member of the SLCC from office in certain circumstances.

<sup>6</sup> See sections 50 to 54 and schedule 2.

role in connection with the Faculty’s disciplinary procedures and also appoints the Chair of the Faculty’s Disciplinary Tribunal.<sup>7</sup>

18. The Faculty’s Complaints Committee, Investigating Committee and Disciplinary Tribunal comprise of members of the Faculty and lay members.<sup>8</sup> A panel of lay members are nominated by Scottish Ministers<sup>9</sup> and from which lay persons are drawn to make up a committee or tribunal. Complaints about the conduct of advocates are made in the first instance to the SLCC. If the SLCC considers that the complaint concerns the conduct rather than professional services of an advocate, then it is remitted to the Faculty for investigation. Such complaints are dealt with firstly by the Faculty’s Complaints Committee and then, where appropriate, the Investigating Committee and, where a complaint is upheld, the Disciplinary Tribunal.

### ***The Association of Commercial Attorneys (“ACA”)***

19. A body may apply to acquire and exercise rights to conduct litigation on behalf of the public and rights of audience through the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>10</sup> (“the 1990 Act”). The ACA are, to date, the only body to have done so. Any application for such rights must be made to the Scottish Ministers and the Lord President.

20. The ACA is comprised of, and responsible for the regulation of, commercial attorneys. Members of the ACA must have a legal qualification and a professional or construction qualification. Members are required to have relevant construction and litigation experience as an architect, quantity surveyor or engineer. Members are officers of the court and can appear in the Sheriff Court in matters relating to construction and building law. They are subject to the regulatory oversight of the SLCC in the same way as other legal professionals. The ACA’s regulatory scheme was approved in 2009<sup>11</sup> and revised in 2019.<sup>12</sup>

### ***The Scottish Legal Complaints Commission (“SLCC”)***

21. The SLCC is a non-departmental public body, with a Board appointed by Scottish Ministers (in consultation with the Lord President). The SLCC operates independently of the government, and the Scottish Ministers have no powers to intervene in operational or adjudicative

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<sup>7</sup> See Rule 96(a) of the Faculty of Advocates Disciplinary Rules 2019 – available at <http://www.advocates.org.uk/making-a-complaint/the-disciplinary-rules>.

<sup>8</sup> The Disciplinary Committee is also chaired by either a retired member of the Judicial Committee of the House of Lords or a Justice of the UK Supreme Court or a retired Senator of the College of Justice (or other appropriate person).

<sup>9</sup> *Ibid.* See Rules 94(a)(ii), 95(a) and 96(c).

<sup>10</sup> See sections 25 to 27.

<sup>11</sup> [Act of Sederunt \(Sections 25 to 29 of the Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990\) \(Association of Commercial Attorneys\) 2009](#)

<sup>12</sup> [Association of Commercial Attorneys: revised scheme - gov.scot \(www.gov.scot\)](#)

matters.<sup>13</sup> The Scottish Ministers' main roles are the approval of board member appointments, approving the location of the organisation, sending the statement of accounts to the Auditor General, and laying the audited accounts in Parliament. The SLCC is required to consult the Scottish Ministers on the budget for the next financial year. The SLCC requires to consult the legal profession each year as to the amount of the levy on the profession, which is used to fund the SLCC and the legal complaints process.

22. The SLCC acts as a single gateway for all complaints against legal professionals in Scotland. It investigates and resolves complaints about inadequate professional services, remits complaints about the conduct of lawyers to the relevant professional organisation<sup>14</sup> ("RPO") (e.g. conduct complaints against solicitors are remitted to the Law Society) and has oversight of complaint handling across the profession.

## **The current complaints system**

### ***First tier complaints***

23. The first stage in the legal complaints process requires any person who wishes to make a complaint, to raise the matter directly with the legal professional or legal firm the complaint relates to. This is described as a 'first-tier complaint' and is intended to allow the legal professional or legal firm an opportunity to resolve the matter with the complainer in the first instance.<sup>15</sup> If a complaint is not resolved at this stage, a complainer may then raise that matter with the SLCC.

### ***The single gateway***

24. Under the 2007 Act, the SLCC is the gateway for all complaints against legal practitioners in Scotland. After assessing the eligibility of a complaint (for example whether a complaint is time-barred or is vexatious), the SLCC categorises it as either a services complaint or conduct complaint.<sup>16</sup> An example of a common services complaint may include poor communication which

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<sup>13</sup> The SLCC is held to account by the Scottish Parliament under the terms of its founding Act, in that the Statement of Accounts of the SLCC is subject to audit by the Auditor General for Scotland and the audited statement is laid before Parliament in accordance with such directions as may be given by Scottish Ministers. The SLCC must also prepare an annual report on its functions and submit that report to the Scottish Ministers as soon as practicable after the end of each financial year.

<sup>14</sup> The RPOs are currently the Law Society, Faculty and ACA.

<sup>15</sup> The Commission is able to accept a complaint before it has been made to the legal professional/firm in certain circumstances as determined by its rules.

<sup>16</sup> 'Inadequate professional services' is defined at section 46 of the 2007 Act as "professional services which are in any respect not of the quality which could reasonably be expected of a competent legal professional. 'Unsatisfactory professional conduct' is defined at s46 of the 2007 Act as "conduct by a solicitor which is not of the standard which could reasonably be expected of a competent and reputable solicitor but which does not amount to professional misconduct and which does not comprise merely inadequate professional services. 'Professional misconduct' is not defined in statute. However, the following test is applied by the Law Society (and the SSDT): "There are certain standards of conduct expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as being serious and reprehensible may properly be categorised as

resulted in an avoidable delay, while a conduct complaint may relate to a legal professional breaching their professional rules by operating without instructions or failing to meet a court-mandated deadline. There is also scope for a complaint to contain elements of both inadequate services and poor conduct.

25. Services complaints are then investigated and determined by the SLCC while conduct complaints are sent to the respective professional organisations for investigation and determination (i.e. the Law Society will investigate conduct complaints relating to solicitors).

### ***Who complaints can be raised against***

26. The SLCC receives complaints against legal practitioners as defined in the 2007 Act. Currently complaints can only be received against those who are regulated by either the Law Society, the Faculty or the ACA. Complaints against individuals or bodies who are providing legal services but are unregulated cannot be considered by the SLCC (for example, will writing services provided by individuals who are not solicitors).

### ***Triage***

27. The requirements on the SLCC to categorise a complaint as relating to services or conduct, and determine its eligibility, are set out in statute and must be carried out in a specified order, irrespective of the nature of the case. When the SLCC receives a complaint, and before it may investigate, it must first consider whether it has been made prematurely (i.e. before first-tier stage). If the complaint has not been made prematurely, the 2007 Act requires the SLCC to categorise it as either a ‘conduct’ or a ‘services’ complaint. Once the complaint has been categorised, the 2007 Act also places a duty on the SLCC to consider whether the complaint has been made timeously and whether it is ‘frivolous’, ‘vexatious’ or ‘totally without merit’ before it may be investigated.<sup>17</sup>

28. The 2007 Act also requires that written notices are issued to notify the parties to the complaint of each decision which has been made.<sup>18</sup>

29. This means that at multiple stages of the complaint process a period of 28 days must elapse to allow time to appeal, before progressing to the next stage, or test, in the process.

30. This process can be time consuming for both the complainer and the legal practitioner. It also has the effect of potentially delaying a clearly serious complaint from being investigated

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professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made”.

<sup>17</sup> [Eligibility \(scottishlegalcomplaints.org.uk\)](http://scottishlegalcomplaints.org.uk)

<sup>18</sup> In support of appeal rights, and to enable a complainer to make an informed decision on whether or not to appeal, the SLCC is required to provide detailed reasoning for their decisions taken at each stage of the process.

swiftly as the SLCC must proceed through the initial stage, or tests, of assessing the complaint before an investigation can be commenced.

31. As a comparison in respect of England and Wales, Section 137(1) of the Legal Services Act 2007 states that a complaint is to be determined “by reference to what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case”.<sup>19</sup>

32. Where a complaint appears to contain elements of both poor conduct and inadequate services in respect of the same issue (referred to as a ‘hybrid issue complaint’) there is no provision in the 2007 Act to enable it to be progressed jointly in a way which would allow both elements to be investigated. In order to address this deficiency, the SLCC developed its own process to deal with hybrid issue complaints. However, a court found in a 2016 case<sup>20</sup> that the 2007 Act did not allow the SLCC to determine that a complaint is a hybrid issue complaint. The court further indicated that where there is any suggestion of a conduct issue within a complaint, then the complaint needed to be treated as a conduct issue complaint.

33. Where a complaint contains elements of both inadequate services and poor conduct, some argue that the requirement to treat the complaint as relating to conduct means that complainers miss the opportunity for the inadequate services element to be dealt with. Services complaints are progressed within a context of reparation to the complainer and can result in the complainer receiving compensation of up to £20,000 or rectification of the error or omission complained of. By contrast, conduct complaints focus on discipline of the legal practitioner who may be censured, fined or struck off. Compensation can be awarded but at a lesser level.

### ***Investigation of service complaints***

34. Where the SLCC is investigating a services complaint, it may seek agreement between the parties to the complaint to settle the complaint, through a combination of conciliation or optional mediation. A settlement may be proposed to the parties and, if accepted by both, it will be resolved and not proceed to determination. If not accepted by either party, it will proceed to determination. This function must be carried out by a determination committee comprised of the SLCC’s legal and non-legal members. This decision is appealable to the Court of Session.

### ***Sanctions in respect of service complaints***

35. The SLCC may impose the following sanctions where a service complaint has been upheld:

- Fees – a reduction or refund of fees (and VAT or other costs) charged by the legal practitioner.
- Compensation for loss, inconvenience or distress – compensation for complainers directly affected by the inadequate professional services.

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<sup>19</sup> [Our approach to determining complaints \(legalombudsman.org.uk\)](https://www.legalombudsman.org.uk)

<sup>20</sup> *Anderson Strathern LLP v Scottish Legal Complaints Commission* 2016 SLT 967.



- Putting it right – the firm carries out work, or takes other action, to correct what has gone wrong or take other action specified by the Commission.
- Competence – where the Commission feels a practitioner does not have enough competence in the law or legal practice, it can report the matter to the RPO.

### ***Compensation values<sup>21</sup>***

36. In terms of compensation for inconvenience and loss, the most common compensation amounts are between £150-£500, while the average is between £1,000-£1,200. With regard to compensation for actual loss, the average amounts of compensation are higher than for inconvenience and distress. However, the SLCC compensates for inconvenience and distress ten times more than actual loss.

37. The total limit on the compensation payable to a complainer is £20,000 but it is very rare for the compensation to be £20,000.

### ***Investigation of conduct complaints***

38. The regulators separately investigate conduct complaints. Conduct can be further considered as unsatisfactory professional conduct (UPC) or professional misconduct. Matters relating to UPC are usually determined by a complaints committee of a regulator, while professional misconduct is usually considered by the relevant Discipline Tribunal. There is not a single set of rules which all regulators must follow, with separate rules for the Law Society,<sup>22</sup> Faculty,<sup>23</sup> and ACA.<sup>24</sup> Decisions in respect of UPC may be appealed to the relevant tribunal.

### ***Sanctions in respect of conduct complaints***

39. Similarly, the rules around sanctions for each branch of the profession differ slightly based on their disciplinary rules and procedures. In general terms an upheld UPC complaint may result in a censure, a fine, an award of compensation to the complainer or an order to undergo training. The maximum compensation award in compensation cases in respect of solicitors is £5,000.<sup>25</sup> The Faculty discipline rules sets out that a maximum award of £15,000 may be made in compensation.<sup>26</sup>

### ***Handling complaints***

40. While it is the responsibility of the regulators to investigate conduct complaints against their members, the SLCC has the power to investigate a complaint about how a regulator dealt

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<sup>21</sup> Based on SLCC trends between 2016 and 2019 [Action we might take \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk)

<sup>22</sup> [How we investigate conduct complaints | Law Society of Scotland \(lawsocietyofscotland.org.uk\)](https://www.lawsocietyofscotland.org.uk)

<sup>23</sup> [Faculty - disciplinary-rules-june-2019.pdf \(advocates.org.uk\)](https://www.advocates.org.uk)

<sup>24</sup> [Association of Commercial Attorneys: revised scheme - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>25</sup> [Solicitors \(Scotland\) Act 1980 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>26</sup> [disciplinary-rules-june-2019.pdf \(advocates.org.uk\)](https://www.advocates.org.uk)

with a conduct complaint. This is referred to as a handling complaint. Where a handling complaint is upheld, the SLCC may make certain recommendations which the regulator may comply with. If it fails to comply with the recommendations, the SLCC may direct it to comply. The SLCC may seek an order from the court where the regulator fails to comply with such a direction.<sup>27</sup>

### ***The cost of legal services regulation***

41. The Robertson report found that there is no comprehensive information publicly available on the total cost of the current regulatory framework, and that it is difficult to estimate the overall cost of regulation for all legal professionals in Scotland as the different bodies with roles in the system have different accounting years and publish that information at different times. Information is not publicly available for all of the bodies in the regulatory framework. In addition, in the current structure in Scotland there is a financial element that is difficult to quantify, this is the voluntary contribution of legal members in respect of regulatory functions. This relates to core aspects of regulation, such as setting admission requirements to the profession, setting professional standards and rules, and consideration of conduct complaints.

42. A key outcome of the Robertson report was that there should be increased transparency in respect of the regulation of legal service. This financial memorandum seeks to provide a best estimate of the cost of the current system, based on information that is publicly available, and based on stakeholder comments. The Bill seeks to ensure that regulators will be required to be more transparent about the cost of regulation in the future.

**Table 1**

<b>Current annual regulatory cost</b>	<b>Most recent figures</b>
Scottish Legal Complaints Commission <sup>28</sup>	£3.9m <sup>29</sup>
Law Society of Scotland	£5.6m <sup>30</sup>
Scottish Solicitors' Discipline Tribunal	£196,716 <sup>31</sup>
Faculty of Advocates	£400,000 <sup>32</sup>
Association of Commercial Attorneys	No information is available for the ACA but is estimated to be minimal.
<b>Approximate total regulatory fund</b>	<b>£10 million</b>

<sup>27</sup> See section 25 of the 2007 Act (and section 57E in relation to licensed providers).

<sup>28</sup> Levy on legal services regulators.

<sup>29</sup> [SLCC Annual Report and Financial Statements 2021-2022 \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk)

<sup>30</sup> Source, Law Society of Scotland

<sup>31</sup> [Scottish Solicitors' Discipline Tribunal, Annual Report, Year ended 31 October 2021](https://www.solicitors.org.uk)

<sup>32</sup> Source, estimated regulatory costs based on Faculty membership fees.

43. As a comparison, the legal regulatory framework in England and Wales is significantly different than in Scotland, however costs are broadly similar after adjusting to take account of populations. In total, legal services regulation in England and Wales costs approximately £97m. Applying a population share to this would give a cost of around £9m per annum.<sup>33</sup>

**Table 2**

<b>Regulatory Body (England and Wales)</b>	<b>Role</b>	<b>Indication of Budget</b>
Legal Services Board	The Legal Services Board is the oversight regulator of legal services in England and Wales	£4.2m (2021-22) <sup>34</sup>
Solicitors Regulation Authority	Approved Regulator for Solicitors	£ 60.5m (2022-23) <sup>35</sup>
Bar Standard Board	Approved Regulator for Barristers	£ 12.8m (2022-23) <sup>36</sup>
Legal Ombudsman	Investigates complaints about lawyers in England and Wales	£15.3m (2022-23) <sup>37</sup>
Solicitors Disciplinary Tribunal	Adjudicates upon alleged breaches of the rules and regulations applicable to solicitors and their firms	£4.2m (2023) <sup>38</sup>
<b>Approximate total regulatory fund</b>		<b>£97m</b>

### **What the Bill does and its key themes**

44. The Bill makes provision in relation to the regulation of legal services. It has five Parts.

- **Part 1** makes provision in respect of the objectives of legal services regulation and the professional principles which apply to persons providing legal services and those who regulate the provision of legal services in Scotland. Part 1 also introduces a two-category regulatory framework which imposes requirements on all legal services

<sup>33</sup> A population share is taken by taking the population of Scotland (5.5 million people) and dividing by the population of England and Wales (59.6 million people). Population data available from ONS: [Population estimates for the UK, England, Wales, Scotland and Northern Ireland - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/population-demography/population/population-estimates-for-the-uk-england-wales-scotland-and-northern-ireland)

<sup>34</sup> [LSB Business Plan 2022 2023 \(legalservicesboard.org.uk\)](https://www.legalservicesboard.org.uk/business-plan-2022-2023)

<sup>35</sup> [SRA | Business Plan and budget \(November 2022-October 2023\) | Solicitors Regulation Authority](https://www.sra.org.uk/about-us/business-plan-and-budget-2022-2023)

<sup>36</sup> [Business-Plan-2022-2023.pdf \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/business-plan-2022-2023.pdf)

<sup>37</sup> [2022-23-ole-business-plan-and-budget-final.pdf \(legalombudsman.org.uk\)](https://www.legalombudsman.org.uk/2022-23-ole-business-plan-and-budget-final.pdf)

<sup>38</sup> [SDT Decision letter \(legalservicesboard.org.uk\)](https://www.legalservicesboard.org.uk/sdt-decision-letter)

regulators and provides measures for Ministers to review regulatory performance in certain circumstances.

- **Part 2** creates a requirement for legal businesses to be authorised by a category 1 regulator to provide legal services and for category 1 regulators to produce a regulatory scheme for the authorisation and regulation of legal businesses.
- **Part 3** makes provision for dealing with complaints in connection with legal services.
- **Parts 4 and 5** make miscellaneous and general provisions.

45. 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 ‘Independent Review of Legal Services Regulation in Scotland’ by Esther Robertson (the Robertson report).

46. The key themes of the Bill relate to the following:

- Regulatory objectives and professional principles
- Legal services regulatory framework
- Standards, monitoring & reporting
- Definition of legal services / reserved activity
- Business structures
- Rights to litigate & rights of audience
- Entity regulation
- Title regulation
- Legal tech
- Client protection fund (Guarantee Fund) & professional indemnity insurance (Master Policy)
- Legal complaints system

## **REGULATORY OBJECTIVES AND PROFESSIONAL PRINCIPLES**

47. The Robertson report set out that the new model should be designed around the delivery of regulatory objectives and professional principles which should be set out in primary legislation.

48. The Scottish Government has carefully considered the Robertson report and has undertaken discussions with key stakeholders on the relevance of existing regulatory objectives and professional principles contained in the 2010 Act. This collaborative approach is designed to bring about strategic change and a clear vision for the future regulatory structure.

49. The analysis of the consultation responses indicates support for the introduction of a modern set of regulatory objectives and professional principles that would apply to all branches of the legal profession, and which support an increased focus on quality, improvement and proportionate risk-based regulation, while also incorporating the Better Regulation Principles and Consumer Principles throughout its areas of responsibility.

50. Section 2 of the Bill sets out the regulatory objectives. Section 3 of the Bill sets out the application of the regulatory objectives, integrating the consumer principles, and incorporates the Better Regulation principles. The regulatory principles set out that the regulatory functions should be exercised in a way that is transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed, and that regulatory functions should be exercised in a way that contributes to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of such functions to do so.

51. Section 4 of the Bill sets out that the professional principles which apply to legal professionals 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.

52. The Bill makes provision for the Scottish Ministers to modify the regulatory objectives and the professional principles. Under section 5 Ministers may add, amend, or remove a regulatory objective or professional principle. Prior to making regulations under this section, the Scottish Ministers must consult the Lord President, each category 1 and category 2 regulator, each approved regulator of licensed providers, the Scottish Legal Services Commission, the independent advisory (consumer) panel of the Commission and the Competition and Markets Authority.

### **Costs on the Scottish Administration**

53. The proposals at sections 2 to 5 of the Bill are not thought to have the potential to result in costs to the Scottish Administration other than those associated generally with the enactment of

any new legislation. These are, for instance, printing and publication costs and which are regarded as routine running costs rather than being attributable to the Bill.

### **Costs on local authorities**

54. Local Authorities employ legal professionals such as solicitors, however it is not anticipated that there will be any costs for local authorities as a result of these proposals as a result of sections 2 to 5 of the Bill. Legal professionals already require to act in a way compatible with these principles.

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

55. The Law Society advise that any significant rules and guidance rewrite to reflect outcomes based regulatory objectives and principles may result in a one-off cost of around £250,000 to the Law Society. This figure is based on their understanding of rule revisions. A significant change to the Law Society rules and guidance may also have a direct financial impact on the profession as solicitors would need to educate themselves on the new approach and amend their own compliance systems and processes, which may carry associated costs. However, it is difficult to estimate the impact on likely costs, if any, without first understanding the extent to which the Law Society will require to revise its own rules.

## **LEGAL SERVICES REGULATORY FRAMEWORK**

56. The Bill will implement a modern, forward-looking model for legal services regulation. Building on the existing framework a two-category system for legal services regulators will provide a proportionate and risk-based approach, while allowing the framework to adapt to changes in the market.

57. The Bill retains and builds upon the current oversight role of the Lord President and the Court of Session in the legal services regulatory framework securing the independence of the legal profession. Key duties include prescribing the criteria and procedure for admission to the legal professions, the approval of changes to practice rules in relation to the legal professions and overseeing the appointment of various governance roles in the regulatory framework. Key elements of the Lord President's role include:

- prescribing the criteria and procedure for admission to the legal professions,
- the approval of changes to practice rules in relation to the legal professions,
- overseeing the appointment of various governance roles in the regulatory framework,
- approval of measures proposed to be taken by the Scottish Ministers in relation to a category 1 or 2 regulator,
- a consultation role before the Scottish Ministers exercise regulation-making powers to make certain changes to the Bill of the 1980 Act,

- a power to revoke special rule changes made by a regulator in relation to a legal services provider.

### **Regulatory categories**

58. Section 8 of the Bill makes provision for legal services regulators to be assigned as either a category 1 or category 2 regulator. The three existing regulators of legal services in Scotland are assigned by the Bill as:

- the Law Society is assigned to category 1,
- the Faculty is assigned to category 2,
- the Association of Commercial Attorneys is assigned to category 2.

59. Any new regulator that has an application for accreditation approved under Chapter 3 of the Bill will be assigned to either category 1 or category 2 by the Scottish Ministers. In adopting a risk-based and proportionate approach, consideration would require to be given to the following by Scottish Ministers when determining the appropriate category for new entrants to the sector:

- The type and range of legal services that are to be regulated,
- Whether the legal services are to be provided directly to members of the public,
- The number of legal services providers that the regulator regulates (or is likely to regulate).

### **Category 1 regulators**

60. Category 1 regulators would be those regulators with a significant membership or whose members provide largely consumer-facing services. Such regulators must exercise their regulatory functions independently of their other functions and properly in all respects (with a view to achieving public confidence). The Bill requires the regulators to review their status annually, other bodies that could be designated as category 1 could include existing or new regulators whose members provide legal services directly to the public and who may form legal firms.

61. Section 9 of the Bill sets out that where a category 1 regulator has functions other than regulatory functions it must establish an independent regulatory committee to discharge its regulatory functions. The category 1 regulator must ensure that the committee is adequately funded and resourced to be able to carry out its functions. The regulatory committee must determine its own structure, governance arrangements and priorities.

62. Section 14 sets out that a category 1 regulator must establish and maintain a fund for the purpose of making grants to compensate persons who suffer financial loss by reason of dishonesty by a legal services provider regulated by the regulator (or a provider it regulated at the time the dishonesty occurred). It is for the category 1 regulator or, where applicable, its regulatory

committee, to determine whether to make payments from the fund. Where a category 1 regulator has a regulatory committee, the fund must be under the management and control of that committee.

63. Section 18 sets out that each category 1 and category 2 regulator must have rules concerning professional indemnity insurance for the legal services providers it regulates against any kind of professional liability.

64. Section 13 requires a category 1 regulator (or, where applicable, its regulatory committee) to prepare a report on the exercise of its regulatory functions as soon as practicable after the end of each reporting year. The report must include information demonstrating how it is complying with the regulatory objectives including, in particular, how compliance is ensured in the handling of complaints, information as to how the regulator (or its committee) is carrying out its regulatory functions, a statement on the strategic priorities of the regulator (or its committee) for the next reporting year in relation to its regulatory functions, a copy of the regulator's (or its committee's) annual accounts (insofar as they are relevant to the carrying out of regulatory functions), and other key information as specified at subsection 2. When preparing an annual report, a category 1 regulator, or where applicable, its regulatory committee must consult the Lord President, and the Consumer Panel. A copy of each annual report prepared under this section must be sent to Scottish Ministers who will publish the report and lay a copy of it before the Scottish Parliament.

65. The Bill provides that the work of regulatory committees would become subject to freedom of information (FOI) requirements in exercising administrative regulatory authority. This stems from the 'Freedom of Information International Review: Scope of Bodies Included',<sup>39</sup> which suggests that bodies who exercise administrative authority, including professional licensing and standard setting organisations, could be an area where the law could be extended to be subject to FOI requirements. Responses to the 'Consultation on Freedom of Information extension of coverage' supported extending the coverage of FOI to the Law Society, and bodies who have regulatory bodies.<sup>40</sup> In its post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002, the Scottish Parliament Public Audit and Post-legislative Scrutiny Committee recognised that FOI has brought important benefits in terms of greater transparency and accountability.<sup>41</sup> This aligns with a number of other professional regulators subject to FOI legislation, such as the General Teaching Council for Scotland, the General Medical Council and the Scottish Social Services Council.

66. The Bill provides at section 9 that, except where provided for in an enactment, the governing body and regulatory committee of a category 1 regulator are to agree arrangements for resolving any disputes that may arise between them. Any disagreement between the Law Society Council and the regulatory committee is subject to arbitration.<sup>42</sup>

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<sup>39</sup> [Freedom of Information International Review: Scope of Bodies Included](#)

<sup>40</sup> [Consultation on Freedom of Information extension of coverage : Consultation Analysis \(www.gov.scot\)](#)

<sup>41</sup> [Post-legislative scrutiny: Freedom of Information \(Scotland\) Act 2002 \(azureedge.net\)](#)

<sup>42</sup> Section 3D of the 1980 Act.



## **Category 2 regulators**

67. Category 2 regulators would be those regulators whose membership is less consumer-facing or more specialist in nature in terms of the legal work undertaken, and whose membership is comparably less in number such as advocates and commercial attorneys. Therefore, the Bill places the Faculty and ACA as category 2 regulators.

68. In this category, it would be considered disproportionate to the size and lack of direct consumer contact for such regulators to establish and then delegate its regulatory function to a regulatory committee. The Bill imposes requirements on category 2 regulators at section 15, such as a duty to exercise regulatory functions independently of other functions, ensuring that sufficient resources are allocated to the exercise of its regulatory functions and regular reviews of how effectively it is exercising its regulatory functions.

69. Category 2 regulators will also require to produce an annual report at section 16 which will include key information such as how the regulator is complying with the regulatory objectives, information as to how the regulator is carrying out its regulatory functions and a summary of the costs incurred by the regulator in carrying out its regulatory functions. The report must be published electronically, most likely on its website. As described above, category 2 regulators will also need to ensure relevant professional indemnity insurance arrangements are in place.

## **The Scottish Legal Services Commission**

70. The Bill at section 51, renames the SLCC as the Scottish Legal Services Commission (“the Commission”). This organisation will retain its core function as the single gateway for all complaints about the provision of legal services in Scotland. It will continue to investigate and resolve complaints about inadequate professional services. It will also continue to refer complaints about the conduct of legal professionals to the RPOs and have oversight of complaint handling across the legal profession.<sup>43</sup> Its role in monitoring trends in legal complaints<sup>44</sup> will continue, and it will have an increased oversight role of how legal practitioners deal with complaints, and how the legal services regulators handle conduct complaints.<sup>45</sup>

71. Furthermore, at section 65 of the Bill, the Commission will have a new role in monitoring complaints relating to the provision of unregulated legal services. The Commission will be required to set rules regarding the process for complaints about unregulated legal services providers. It is expected that the Commission will set a narrow scope in the types of complaints it

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<sup>43</sup> Section 17 of the [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2007/17), sets out the SLCC’s powers to examine documents and demand explanations in connection with conduct or services complaints.

<sup>44</sup> [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2007/17)

<sup>45</sup> In respect of complaint handling, the Commission would have a similar role to that of the Legal Services Board in England and Wales: [Legal Services Board complaints handling](#)

will investigate to begin with, and expand this over time as it develops a greater understanding of the unregulated sector.

## **Consumer Panel**

72. Currently the SLCC is required to establish an independent advisory panel, known as the ‘Consumer Panel’.<sup>46</sup> The role of the Consumer Panel is to make recommendations to the SLCC for improvements to its practice and procedures, to make suggestions to the SLCC of topics for research connected to consumers, and to express views on such matters relevant to the SLCC’s functions as the SLCC directs. The Bill, at section 75, will extend the role the advisory panel to matters relating to legal services regulation in Scotland more broadly, with the policy intention of placing consumer interests at the heart of legal services regulation.

## **Costs on the Scottish Administration**

### ***The Scottish Legal Services Commission***

73. As set out earlier in this financial memorandum, the SLCC receives no funding from the Scottish Government. However, while the ongoing cost of regulation of legal services is met by the profession, and this will continue to be the case, the Scottish Government funded the creation of the SLCC in 2007. As such, the reconstitution into the Scottish Legal Services Commission will be funded by the Scottish Government to adjust to its expanded role.

74. Part 3 of the Bill relates to the legal complaints system. Section 51 of the Bill renames the Scottish Legal Complaints Commission as the Scottish Legal Services Commission, the intention is to build upon the existing structure, retaining current staff and infrastructure, a one-off adjustment cost is anticipated in the range of £645,000.

### ***Start-up costs***

75. The Scottish Government will provide funding in respect of the start-up adjustment costs for the Commission as estimated below. It will be for the legal profession to fund the ongoing costs of the Commission through the annual general levy.

76. As the SLCC currently rents office space, the renamed Commission will require to assess its needs, to establish if it requires to move in the immediate term following the enactment of this Bill. The current annual accommodation cost to the SLCC is £350,000. The start-up element of any property move cost would be for the first six months’ rent which equates to £175,000. This reflects the position in 2007, in that the Scottish Government funded the first 6 months’ rent to support the transition, following this the SLCC required to meet the cost of rent through the levy on the profession. It is not anticipated that there will be an increase in accommodation costs.

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<sup>46</sup> [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(legislation.gov.uk\)](http://legislation.gov.uk)

### ***Equipment***

77. The Commission's office will require furniture and IT equipment. It is anticipated that the Commission will retain much of its existing equipment. To provide for upgrades and replacement where required, a one-off budget is estimated at around £20,000.

### ***IT***

78. To reflect the Commission's additional role, IT systems will require to be updated to monitor new information in respect of a potential broader range of legal services complaints, explored in more detail in the complaints section of this memorandum. This is estimated at around £200,000, based on similar justice IT system updates and requirements of the Commission. For example, the Scottish Prison Service anticipate a cost of around £300,000 to update their IT system in respect of bail and release from custody reforms,<sup>47</sup> while the National Records of Scotland advised that the most recent comparator, they have for the creation of a new IT system is in the region of £100,000.<sup>48</sup>

### ***Recruitment***

79. The intention is to retain the current staff of the SLCC, current staff costs are set out at table 15. While the Commission will have an increased role as set out in the complaints section of this memorandum, it is anticipated that efficiencies will be realised by reforming the complaints system. The Bill assumes staff levels are expected to remain at current levels. The current pension arrangements will remain in place. There are not anticipated to be additional cost in respect of pensions. Therefore, no initial recruitment costs are factored.

### ***Training***

80. SLCC training costs in 2021/22 were £35,220.<sup>49</sup> It is anticipated that an initial training period will be required to reflect the additional functions of the Commission as explored in more detail in the complaints section of this memorandum, in addition to training on new IT systems. A cost of £50,000 has been estimated for staff training, based on current figures, and to reflect additional roles.

### ***Outreach (promotion and awareness raising)***

81. In 2021/22 the cost of outreach to the SLCC was £29,000. As the single gateway for all complaints about legal professionals in Scotland, it is important that the public understand the role of the Scottish Legal Complaints Commission. To publicise the additional functions, and the reconstitution of the Commission, it is expected that a publicity campaign and guidance

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<sup>47</sup> Page 17, [Financial Memorandum \(parliament.scot\)](https://www.parliament.scot/FinancialMemorandum)

<sup>48</sup> Page 2, [Financial Memorandum \(parliament.scot\)](https://www.parliament.scot/FinancialMemorandum)

<sup>49</sup> Page 8, [SLCC Annual Report and Financial Statements 2021-2022 \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk/SLCC-Annual-Report-and-Financial-Statements-2021-2022)

publications will be required. It is anticipated a start-up budget of £80,000 for this purpose. This also reflects that existing content, materials and channels will require to be updated.

### ***Legal***

82. The SLCC's legal costs in 2021/22 were £292,000.<sup>50</sup> However, £177,416 of this relates to costs associated with the appeals process. Appeals costs are explored in more detail in the complaints section of this memorandum. Therefore, SLCC legal costs minus appeals expense are in the region of £115,000.

83. The SLCC paper Reimagine Regulation<sup>51</sup> 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 to the legal complaints process for consumers and legal professionals. The Robertson report supported this assessment.

84. The Robertson report set out that the complaints system should allow the regulator to adopt a risk-based approach to intervene where systemic issues are identified and where there has been a failure to meet standards.

85. The analysis of the consultation responses supports the view that the legislation which underpins the complaint's structure should be more flexible and proportionate. The Bill will provide a framework in which the Commission and regulators will have flexibility and the ability to act in a proportionate way in considering discipline and legal complaints.

86. The Commission will require to establish rules for a reformed legal complaints system within the parameters set within this Bill. It is estimated associated legal costs will be around £100,000 to support this adjustment, based on understanding of current legal costs.

### ***Summary***

87. The table below summarises the estimated start-up costs associated with the Commission, funded by the Scottish Government. This is based on the figures given in the paragraphs above. These figures have been developed in consultation with the SLCC.

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<sup>50</sup> Page 46, [SLCC Annual Report and Financial Statements 2021-2022 \(scottishlegalcomplaints.org.uk\)](https://scottishlegalcomplaints.org.uk)

<sup>51</sup> [reimagine regulation SLCC priorities for a consultation on legal services regulation.pdf \(scottishlegalcomplaints.org.uk\)](https://scottishlegalcomplaints.org.uk)

**Table 3**

<b>Scottish Legal Services Commission start-up costs</b> (Costs falling on the Scottish Government)	
<b>Office costs:</b>	
Accommodation	£175,000
Equipment	£20,000
IT	£200,000
<i>Sub-total</i>	<i>£395,000</i>
<b>Staff costs</b>	
Recruitment	-
Training	£50,000
<i>Sub-total</i>	<i>£50,000</i>
<b>Functional costs</b>	
Promotion and awareness-raising (including establishing a register of unregulated legal services providers).	£100,000
Legal costs	£100,000
<i>Sub-total</i>	<i>£200,000</i>
<b>Total</b>	<b>£645,000</b>

88. These estimates are intended to demonstrate why the Scottish Government considers a start-up budget in the order of £645,000 to be appropriate, rather than to prescribe exactly how such a budget should be spent.

#### ***Scottish Solicitors Discipline Tribunal***

89. The Scottish Government current pays for the SSDT lay members' fees and expenses. The Bill will not change current arrangements.

## **Costs on local authorities**

90. While local authorities employ solicitors, the Bill focuses on those who provide legal services to the public for remuneration and that in-house solicitors are largely excepted from the changes being made, so there will be very little impact as far as they are concerned.

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

### ***Legal services regulatory landscape***

91. The administration of the regulation of legal services is funded by a levy on the legal profession. Current costs are set out below. As the proposals seek to build on the existing framework, it is not anticipated that there will be substantial costs associated with this part of the Bill, however there will be implication in respect of the duties placed on the legal services regulators. The costs associated with these duties are explored in the further sections of this financial memorandum.

### ***The Lord President of the Court of Session***

92. The Lord President of the Court of Session is the Head of the Judiciary in Scotland. The Lord President has responsibilities in relation to the regulation of the legal profession and has a regulatory function in relation to the SLCC.<sup>52</sup> The Lord President and the Court of Session have oversight for prescribing the criteria and procedure for admission to the legal professions, the approval of changes to practice rules in relation to the legal professions, and an overarching role in the regulatory framework. This role is funded by the Scottish Courts and Tribunals Service. The Lord President's office main role relates to judicial matters, a breakdown of costs related to regulation is not published.

93. It is anticipated that the proposals in this Bill will have minimal cost implications in respect of the oversight role of the Lord President of the Court of Session, in that it is anticipated that the proposals will require a small amount of extra time commitment in considering changes to regulatory rules in respect of this reform.

### ***Law Society of Scotland***

94. The Law Society comprises largely of solicitors and solicitor-advocates. The independent Regulatory Committee of the Law Society was created as part of the Legal Services (Scotland) Act 2010 and exercises the Law Society Council's regulatory functions as set out in section 3F of the Solicitors (Scotland) Act 1980. Its core purpose is to ensure these functions are exercised independently, properly and with a view to achieving public confidence.

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<sup>52</sup> The SLCC must consult with the Lord President on appointing members and on rule changes to practice and procedure. The Legal Profession and Legal Aid (Scotland) Act 2007 also sets out that the Lord President may, by written notice, remove the chairing member of the SLCC from office in certain circumstances.

95. Regulatory functions are the Law Society's single largest expenditure. The costs reported in the Law Society's Annual Report are in the region of £2.3m.<sup>53</sup> However, the Law Society advises that these relate to the direct costs of the Regulation Directorate, and not the full cost incurred in the delivery of the regulatory regime, which encompasses other directorates across the Law Society. For example, the Education, Training and Qualifications Directorate delivers aspects of the regulatory regime and operational support functions such as IT and HR also play a role in supporting regulatory work. The Law Society do not account separately for regulatory and non-regulatory costs in relation to activities carried out by parts of the Law Society outwith the Regulation Directorate. The Law Society advise that a best-informed estimate of their regulatory costs according to their latest draft annual financial statements, including an estimated share of support functions, shared services and other directorates involved in the regulatory regime, but excluding any allocated income, amounts to £5.6m.

96. This is funded by members of the Law Society via practising certificate fees. Proposals on the practising certificate fee are brought before the Law Society AGM each year. The Law Society publishes a fee structure for its members. Currently the practicing certificate fee for solicitors, partners and in-house solicitors is £585. It is £292.50 for newly admitted solicitors.<sup>54</sup>

97. The Law Society employs 12 people in respect of Education, Training & Qualification, 18 people in respect of External Relations, 35 people in respect of Finance and Operations, 20 people in respect of Member Services, and 44 people in respect of Regulation.

98. The Law Society advised that the creation and operational costs of a more independent Regulatory Committee, with increased reporting, transparency and governance requirements will generate initial and ongoing costs - including set-up costs, resource, committee, IT and systems, meeting costs. The Law Society advise that amount of cost, and whether it can be absorbed into existing budget, largely depends on the extent to which the Bill requires a separation of regulatory and representative staff and systems.

99. As the Law Society is currently required by statute to delegate its regulatory functions to an independent Regulatory Committee, the Scottish Government have assumed that the adjustment cost for the regulation of solicitors will be absorbed within the current regulatory costs reported by the law Society of £5.6m. The duties placed on category 1 regulators and associated costs are set out below in respect of sections 9 to 14, and sections 17 to 18 of the Bill.

### ***Freedom of information***

100. The Law Society advise that the proposal to make category 1 regulators regulatory functions subject to FOI will bring significant initial set up and ongoing costs, in that new dedicated resource will be required to review, consider and process FOI requests. In addition, there will be an impact on existing staff. The Law Society advised that they may require to change some

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<sup>53</sup> [2021 Accounts \(lawscot.org.uk\)](https://www.lawscot.org.uk/2021-accounts)

<sup>54</sup> [Fees | Law Society of Scotland \(lawscot.org.uk\)](https://www.lawscot.org.uk/fees)

of their existing processes and data systems in order to be complaint with FOI, however cannot quantify the initial and ongoing costs as it is not possible to foresee how many requests will be received under FOI, or what updates to processes and systems will be required.

101. The Scottish Government has undertaken an exercise to provide an estimate of the cost it takes officials to respond to an FOI request.<sup>55</sup> It is assumed that these costs would relate to other bodies.

**Table 4**

<b>Estimated costs associated with responding to a single Freedom of Information request.</b>	
<b>Stage</b>	<b>Cost</b>
Requests	£234
Reviews	£454
Appeals	£1456

102. To provide a comparison the Scottish Legal Complaints Commission received 21 FOI requests and 2 reviews in 2021/22.<sup>56</sup> We anticipate the ongoing level of FOI's to level off at around a similar number. This would equate to an annual ongoing cost of around £5,000 in respect of requests, and around £1,000 in respect of reviews.

103. In addition, under Section 12 of FOISA public authorities are not required to comply with a request for information if the authority estimates that the cost of complying would exceed the upper cost limit, which is currently set at £600 by regulations made under section 12.

### ***Scottish Solicitors' Discipline Tribunal***

104. The SSDT is an independent body which mainly deals with serious disciplinary issues that arise within the Scottish solicitor profession. As a formal judicial body, the SSDT is constituted under the provisions of sections 50 – 54 and schedule 4 of the Solicitors (Scotland) Act 1980 as amended. Complaints against solicitors in Scotland are channelled first through the SLCC which will refer conduct matters to the Law Society. The Law Society will then carry out an initial investigation and can decide to prosecute more serious cases before the SSDT.

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<sup>55</sup> [Costs of responding - Freedom of Information \(Scotland\) Act 2002 - information request handling: annual report 2019 - gov.scot \(www.gov.scot\)](#)

<sup>56</sup> [SLCC Annual Report \(scottishlegalcomplaints.org.uk\)](#)



105. The annual expenditure of the SSDT was £196,716 in its latest annual report,<sup>57</sup> it is not anticipated that the proposals in this Bill will affect the ongoing cost of the SSDT.

### ***Faculty of Advocates***

106. The Faculty of Advocates is comprised of advocates with the responsibility for the regulation of advocates having been delegated by the Court of Session to the Faculty.

107. The Faculty of Advocates Complaints Committee and Disciplinary Tribunal comprises both Members of Faculty and Lay Members. A panel of Lay members are nominated by Scottish Ministers<sup>58</sup> and from which lay persons are drawn to make up a committee or tribunal. Complaints about the conduct of Members of Faculty are made in the first instance to the SLCC. If the SLCC considers that the complaint concerns the conduct rather than professional services of a Member of Faculty then it is remitted to the Faculty for investigation and determination. Such complaints are dealt with firstly by the Faculty Complaints Committee and then, where appropriate, the Faculty Disciplinary Tribunal.

108. The Faculty of Advocates does not publish costs associated with its regulatory functions, however a fee structure for membership to the Faculty of Advocates is set out below:

**Table 5**

<b>Annual fees associated with membership of the Faculty of Advocates</b>	
<b>Practising members</b>	<b>2023</b>
Rates – Junior < 3 Years	£110
Rates – Junior 3-5 Years	£440
Rates – Junior > 5 Years	£700
Rates – Senior 1-5 Years	£820
Rates – Senior > 5 Years	£1,000
<b>Non-Practising members</b>	
Standard Rate	£200
Judge Rate	£450

<sup>57</sup> [Annual Report \(ssdt.org.uk\)](https://ssdt.org.uk)

<sup>58</sup> [The Disciplinary Rules | Faculty of Advocates](#) See Rule 96(c).

109. There are approximately 380 advocates with 3 or more years' experience, and 65 in their first year of practice.<sup>59</sup> Assuming the majority of those with over 3 years are on the top band, this equates to around £381,000. The fees for those in their first year are around £7,150. Based on these figures the overall amount of fees may be expected to be around £400,000 per annum.

110. As a category 2 regulator the Faculty will not require to make changes to its structure as a result of the Bill. The ongoing costs associated with the regulation of advocates are anticipated to be met within this budget. The duties placed on category 2 regulators and associated costs are set out below in respect of sections 15 to 18 of the Bill.

### ***Association of Commercial Attorneys***

111. There are currently 5 members of the ACA.<sup>60</sup> The ACA is comprised of and responsible for the regulation of commercial attorneys. Members of the ACA must have a legal qualification and a professional or construction qualification. Members are required to have relevant construction and litigation experience as an architect, quantity surveyor or engineer. Members of the ACA are officers of the court and can appear in the Sheriff Court in matters relating to construction and building law.

112. The ACA does not publish costs associated with its regulatory functions, however have indicated that the adjustment and ongoing costs associated with the proposals in this Bill are anticipated to be minimal and met within existing budgets. The duties placed on category 2 regulators and associated costs are set out below in respect of sections 15 to 18 of the Bill.

### ***Scottish Legal Complaints Commission***

113. The SLCC is an executive non-departmental public body ("NDPB"), with a Board appointed by Scottish Ministers (in consultation with the Lord President). The Ministers' main roles are the appointment of members, approving the location of the organisation, sending the statement of accounts to the Auditors General and laying the audited accounts in parliament. The SLCC is required to consult with Ministers on its budget for the next financial year. The SLCC operates independently of the government, and Scottish Ministers have no powers to intervene in operational or adjudicative matters. The Bill will retain these core functions and duties.

114. The start-up costs of the reconstituted Commission will be met by the Scottish Government, however the ongoing cost of the activity of the Commission will continue to be met by the annual general levy on the legal profession, this was £3.9m in 2021/21.

115. As a key area for reform, the intention is to reduce the cost of the complaints system. This would seek to reduce the cost of regulation on the legal profession who fund it though the levy, and ultimately seek to provide a saving for consumers and businesses who use legal services.

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<sup>59</sup> Page 26, [slcc-budget-op-plan-2022-to-2023.pdf \(scottishlegalcomplaints.org.uk\)](#)

<sup>60</sup> Page 26 [slcc-budget-op-plan-2022-to-2023.pdf \(scottishlegalcomplaints.org.uk\)](#)

Associated ongoing costs are explored in more detail in the complaints section of this memorandum.

### ***Consumer Panel***

116. The consumer panel is comprised of members from Citizens Advice Scotland, the Competition and Markets Authority, Queen Margaret University Consumer Dispute Resolution Centre, Scottish Women's Aid and Young Scot. The Panel is administered and funded within the costs of the SLCC.

## **STANDARDS, MONITORING & REPORTING**

117. A key policy intention of the Bill is to improve the transparency and accountability of legal services regulation by imposing a duty on regulators to publish information about how they adhere to the regulatory objectives and the cost of regulating the legal profession.

118. The importance of the independence of the legal profession is enshrined in the Bill as a regulatory objective - the promotion of an independent, strong and diverse legal profession. There is also a need for regulation to operate in the public interest and for the needs of consumers to be protected. Therefore the Bill, at sections 19 and 20, allows for the Scottish Ministers to intervene in the event of concerns being raised that a regulator is failing to exercise their regulatory functions in a way that is compatible with the regulatory objectives or in the public interest.

### **Costs on the Scottish Administration**

119. Any review of a regulator would be considered by Scottish Ministers, or a body that Scottish Ministers considered it appropriate to delegate the matter to. However, the decision in respect of any sanction would remain solely a matter for Scottish Ministers, with the agreement of the Lord President in most cases.

120. The Robertson report took a view that there is no significant risk of harm in the current regulatory framework, it is therefore anticipated that such a review would be a rare occurrence. However, should a review be raised, estimated associated staff costs are set out below. The costs are based on the Scottish Government pay scales for 2022, with a mid-range figure taken for each grade and band with 33% added for pensions and national insurance.

**Table 6**

<b>Estimated annual cost on the Scottish Government associated with the administration of a single review of regulatory performance</b>	
1 x C1 (3%)	£2,189
1 x B2 (20%)	£9,237
<b>Total</b>	<b>£11,426</b>

121. In summary, costs for administering a review may be in the range of around £11,426 over one year. The figures at tables 7 and 8 estimate figures in this region, which reflect the costs associated with administering a review or application. We consider that such costs would be met within the existing Civil Law and Legal System Division budget.

#### **Costs on local authorities**

122. It is not anticipated that there will be any costs for local authorities as a result of these proposals.

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

##### ***Reporting***

123. The Law Society report on their performance against their own objectives each year, in addition to a range of financial information.<sup>61</sup>

124. As the Bill will define the Law Society as a category 1 regulator, its independent regulatory committee will require to submit an annual report to Scottish Ministers, to be laid before the Scottish Parliament. Key points to be included in that report will be adherence to the regulatory objectives, strategic regulatory priorities for the next year, and a summary of the cost of carrying out regulatory functions.

125. The Faculty and ACA do not currently publish an annual report or set out their regulatory costs. As the Bill will define both as category 2 regulators, they will require to publish corresponding information in a transparent way.

126. The Law Society, Faculty, and ACS advise that there will be initial and ongoing costs related to the reporting requirements in this Bill, however, anticipate that the initial and ongoing costs will be minimal.

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<sup>61</sup> [Annual reports | Law Society of Scotland \(lawscot.org.uk\)](https://www.lawscot.org.uk/annual-reports)

## **Investigation**

127. There may be a significant cost to respond to and address any investigation or intervention by Scottish Ministers in the light of concerns being raised on how and whether a regulator is delivering regulatory objectives and the operation of regulation in relation to public interest. The cost would depend on the facts and circumstances of such an investigation, and any intervention. We have estimated a cost of around £20,000 and £100,000 depending on the nature of the investigation, it is anticipated that the majority of this will relate to administration and legal costs.

## **DEFINITION OF LEGAL SERVICES / RESERVED ACTIVITY**

### **Definition of legal services**

128. The Robertson report recommended that a definition of legal services should be set out in primary legislation but did not set out a proposed definition. The 2010 Act defines legal services for the purposes of that Act as:

- “Legal advice or assistance in connection with legal documents such as a contract, deed, writ or will, as well as legal advice or assistance and/or legal representation in connection with applying the law or seeking a legal dispute resolution.”<sup>62</sup>

129. The consultation analysis shows that most respondents (88%) agreed that there should be a definition of legal services. It was felt this would provide greater clarity, transparency, accountability, and consumer protection.

130. It is the policy intention that the definition of legal services in the Bill will provide clarity that regulation applies to the provision of legal services generally and not just those activities reserved under the 1980 Act, reserved legal activity is explored in more detail below. This will apply to existing legal services regulators and those regulators which gain approval in the future, as detailed in previous instructions. For the avoidance of doubt, it is not intended that currently unregulated providers of legal services should be brought within the scope of legal services regulation.

131. The Bill defines legal services at section 6 as services which consist of (at least one of):

- the provision of legal advice or assistance in connection with
  - any contract, deed, writ, will or other legal document,
  - the application of the law, or
  - any form of resolution of legal disputes, (“legal disputes” includes disputes as to any matter of fact the resolution of which is relevant to determining the nature of any person’s legal rights or obligations).

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<sup>62</sup> Section 3(1) of the Legal Services (Scotland) Act 2010.

- the provision of legal representation in connection with—
  - the application of the law, or
  - any form of resolution of legal disputes.

132. Legal services do not include—

- judicial activities,
- any other activity of a judicial nature,
- any activity of a quasi-judicial nature (for example, acting as a mediator).

### **Confirmation agents and will writers**

133. The Robertson report recommended that there should be no substantial change at this stage to bring more activities within the scope of those activities “reserved” to solicitors or to remove activities i.e. will writing should not be reserved. Around three quarters of respondents (76%) agreed that there should be no substantial change at this stage to bring more activities within the scope of those activities ‘reserved’ to solicitors or to remove activities.

134. The 2010 Act proposed a new scheme for the regulation of confirmation agents and will writers requiring them to be members of an approving body. The approving body would be certified by the Scottish Ministers and would be responsible for regulating the activities of its members. The 2010 Act also introduced the ability of the SLCC to take complaints relating to the services provided by confirmation agents and will writers. Most of these provisions have not been brought into effect and the proposed regulatory system for confirmation agents and will writers is not in operation. The Bill will repeal the provisions relating to confirmation agents and will writers in the 2010 Act. New provisions in the Bill allowing for complaints against unregulated legal services practitioners, including confirmation agents and will writers, will allow a level of protection for consumers who receive poor services in relation to these areas.

### **Costs on the Scottish Administration**

135. The proposals at sections 6 of the Bill are not thought to have the potential to result in costs to the Scottish Administration other than those associated generally with the enactment of any new legislation. These are, for instance, printing and publication costs and which are regarded as routine running costs rather than being attributable to the Bill.

### **Costs on local authorities**

136. It is not anticipated that there will be any costs for local authorities as a result of the section 6 of the Bill as this section simply provides a definition of legal services.

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

137. This impact of the definition of legal services is explored in the relevant sections of this Financial Memorandum. For example, the definition of legal services is important in respect of section 39 with regard to ‘entity regulation’, the requirement for legal businesses to be authorised to provide legal services, and section 82 with regard to ‘title regulation’, the offence of taking or using the title of lawyer.

## **BUSINESS STRUCTURES**

### **Licensed legal service providers (alternative business structures)**

138. The 2010 Act made provision to remove certain restrictions which previously prevented solicitors from entering into business relationships with other regulated professionals i.e. non-solicitor professionals such as accountants. The 2010 Act therefore allowed investment in business entities providing legal services by both solicitors and non-solicitors, with the aim of greater flexibility and reduced barriers to competition. Such businesses are often referred to as alternative business structures (ABS), though in Scotland the legislation refers to them as licensed legal service providers (‘licensed providers’).

139. Licensed providers must be regulated by an approved regulator. Under the 2010 Act, a professional or other body can become an approved regulator by way of a two-stage process. The first stage is to obtain approval and the second to obtain authorisation both by application to the Scottish Ministers. If an application for approval is granted by the Scottish Ministers (with the agreement of the Lord President), then the body can call itself an approved regulator. It is only after successfully being granted authorisation to act by the Scottish Ministers that the approved regulator can begin to exercise its regulatory functions in relation to licensed providers. The 2010 Act limits the number of approved regulators which may exist at one time to three.

140. The policy intention is to promote access to justice through allowing for:

- employee and community ownership of legal firms as licensed legal services providers,
- outside investment into legal entities as licensed providers, to address concerns that Scottish firms are at a competitive disadvantage compared to other jurisdictions.

141. This is intended to make it easier for legal professionals to go into partnership with other types of professionals such as accountants to provide shared services, and benefit the sector, drive competition and innovation, and provide consumers with greater choice.

142. Section 49 of the 2010 Act sets out that an entity is eligible to be a licensed provider only if the qualifying investors in it (taken together) have at least a 51% stake in the total ownership or

control of the entity.<sup>63</sup> A licensed provider defined in section 47 of the 2010 Act as a business entity which provides (or offers to provide) legal services to the public for a fee, gain or reward and is licensed to do so.

143. The Bill at sections 78 and 80 will seek to liberalise licensed providers by removing restrictions which currently require such firms to operate for ‘fee, gain or reward’, and 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.

### **Charities**

144. Charities cannot directly employ solicitors for the provision of reserved legal services to its clients. The 1980 Act allows law centres and citizens advice bodies to employ solicitors who can operate on their behalf in relation to some reserved legal activities and proceedings in court, but this right is not extended to charities.

145. The policy intention is to allow third sector organisations to employ legal professionals to undertake reserved legal services such as court proceedings, in addition to allowing non-profit organisations to apply to become licensed legal services providers.

146. The Bill will provide charities the same exemption as that which applies to a law centre or a citizens advice body under section 26(2) of the 1980 Act. At section 81 of the Bill, it is intended to allow charities to use solicitors as agents in the provision of all legal services listed in section 26(1), including reserved legal services, in the same way as law centres and citizens advice bodies.

### **Costs on the Scottish Administration**

147. An application to become an approved regulator of licenced legal services providers will continue to require to be made to Scottish Ministers. The Scottish Government will administer this process.

148. It is anticipated that such an application would be a rare occurrence as the legislation provides for three authorised regulators in total. The Law Society are the only body to be authorised to date. However, should an application be made associated staff costs are set out below. The Legal Services (Scotland) Act 2010 established the provisions in respect of licenced legal service providers, however a revised position is set out below. The costs are based on the Scottish Government pay scales for 2022, with a mid-range figure taken for each grade and band with 33% added for pensions and national insurance.

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<sup>63</sup> [The professions which currently qualify as ‘regulated professions’ under the Act are set out in the Licensed Legal Services \(Specification of Regulated Professions\) \(Scotland\) Regulations 2012.](#)



**Table 7**

<b>Estimated annual cost on the Scottish Government associated with the administration of a single application to become an approved regulator</b>	
1 x C1 (3%)	£2,189
1 x B2 (20%)	£9,237
<b>Total</b>	<b>£11,426</b>

149. In summary, costs for processing applications will range from £11,426 over one year. We consider that such costs would be met within the existing Civil Law and Legal System Division budget.

#### **Costs on local authorities**

150. It is not anticipated that there will be any costs for local authorities as a result of these proposals as it would not be possible for a local authority to become authorised as an approved regulator of licenced legal services providers.

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

151. A body seeking to become an authorised as an approved regulator will incur the costs of an application to the Scottish Ministers and, if successful, ongoing regulatory costs. It is anticipated that statutory legal services regulator would be most likely to apply. The Law Society of Scotland was approved as an authorised regulator of licenced legal services providers in December 2021 and is the only body to date to apply.

152. These bodies already bear the costs of regulation of their members and those costs are met from the subscriptions paid by those members.

153. The costs set out in the current framework illustrate indicative costs that may apply to bodies applying to become approved regulators of licenced legal services providers, and the costs that might apply to licenced legal services providers.

#### ***Law Society of Scotland***

154. The Law Society advise that there will be an initial one-off cost to review and update the regulatory scheme and their application forms and processes to reflect the changes, however do not view that cost to be significant. The Law Society also advise that the applications costs and ongoing compliance costs for some licensed legal services providers may increase if the reduction of the 51% threshold to 10% increases the number of individuals who will be subject to fit and

proper checks. The Law Society have not yet published fees associated with licenced legal service providers.

155. It may be possible an increase of licenced legal services providers may increase the number of providers contributing and provide for greater economies of scale that could potentially decrease the cost to each provider.

156. It is anticipated that the Law Society regulatory scheme in respect of licensed legal service providers will set out an initial application fee on providers, with an annual licence fee based on a firm's annual turnover.

### ***Scottish Legal Complaints Commission***

157. Any complaints made about licenced legal services providers will be made to the Scottish Legal Complaints Commission. The SLCC will consider complaints about service and refer complaints about conduct to the relevant statutory regulator. Scottish Ministers have delegated the investigation of complaints about approved regulators to the SLCC to investigate.

158. The SLCC budget sets out the cost associated with its role in respect of the complaints process for licenced legal services providers. In its 2022/23 budget those cost are as follows:<sup>64</sup>

- Approved Regulator Fee: £10,000 (previous year: £3,000)
- Approved Regulator complaints levy: £8,000 (previous year: £8,000)
- Licensed Legal Service Provider Fee: £1,000 (previous year: £1,000)

159. The commission will require to consider these fees based on the number of authorised regulators in the regulatory framework and the number of licenced legal service providers. The addition of further authorised regulators, or an increase of licenced legal services providers may increase the number of bodies paying into the annual general levy, and provide for greater economies of scale that could potentially decrease the cost to each body.

## **RIGHTS TO LITIGATE & RIGHTS OF AUDIENCE**

160. In terms of sections 25 to 27 of the 1990 Act, a body may apply to acquire and exercise rights to conduct litigation on behalf of the public and rights of audience before Scottish courts. The ACA are, to date, the only body to have done so. Any application for such rights must be made to the Scottish Ministers and the Lord President.

161. The policy intention is to provide for a modern, forward-looking legal services regulation framework for Scotland that will best promote competition and innovation. The Bill will repeal

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<sup>64</sup> [SLCC budget plan 2022-2023.pdf](#)

the provisions in the 1990 Act and introduce new modern equivalent provisions. As well as continuing to allow a body to apply for rights to conduct litigation and rights of audience, a body will be able to apply for the rights to authorise its members to provide other types of legal services. This is intended to act as a route for new regulators to enter the legal sector in the future. However, this will not prevent legal services providers who are unregulated from continuing to offer unreserved legal services.

162. Sections 25 to 27 of the Bill provides for new regulators to enter the market and for their members to acquire rights to provide legal services. While much of this is a restatement of material from the 1990 Act, the rights to provide legal services are broader.

### **Costs on the Scottish Administration**

163. An application will require to be made to Scottish Ministers. The Scottish Government will administer this process liaising with the Lord President's Office. Any application would be a matter for Scottish Ministers, in consultation with the Lord President.

164. It is anticipated that such an application would be a rare occurrence, as to date only the ACA have successfully applied for these rights. However, should an application be made associated staff costs are set out below. The costs are based on the Scottish Government pay scales for 2022, with a mid-range figure taken for each grade and band with 33% added for pensions and national insurance.

**Table 8**

<b>Estimated annual cost on the Scottish Government associated with the administration of a single application to obtain rights to conduct litigation and rights of audience</b>	
1 x C1 (3%)	£2,189
1 x B2 (20%)	£9,237
<b>Total</b>	<b>£11,426</b>

165. In summary, costs for processing applications will range from £11,426 over one year. We consider that such costs would be met within the existing Civil Law and Legal System Division budget.

### **Costs on local authorities**

166. It is not anticipated that there will be any costs for local authorities as a result of these proposals, as local authorities generally employ solicitors who may litigate and attend court on their behalf.

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

167. A body seeking to become an authorised regulator will incur the costs of an application to the Scottish Ministers and, if successful, ongoing regulatory costs.

168. Any new entrant to the legal services market would be expected to contribute to the core regulatory costs such as the annual general levy. This may result in the cost of the complaints system becoming proportionately less to those who fund it, due to greater economies of scale.

169. The cost of any application will depend on the facts and circumstances of each application, however we have estimated a cost of around £50,000 and £100,000 on a body to apply, it is anticipated that this will relate mostly to administrative and legal costs.

## **ENTITY REGULATION**

### **Authorisation of legal businesses**

170. Part 2 of the Bill will require legal businesses which provide legal services to the general public for a fee, to be authorised to do so by the category 1 regulator that is responsible for the regulation of the owner's legal business. Employers of in-house solicitors will not require to be regulated at an entity level, though their solicitor employees will continue to be regulated on an individual basis through the current system of regulation.

171. Entity regulation will not seek to replace or dilute regulation at individual level. To ensure the strongest of consumer protections, a 'hybrid' approach will be introduced. Regulating legal businesses as well as individual solicitors through a hybrid approach will provide more efficient and effective regulation – both from the consumer and the solicitor perspective, by providing proportionate and appropriately targeted regulation.

172. Legal businesses will require to be authorised if they meet the following criteria:

- They are a legal business, owned wholly by solicitors or other individuals regulated by a category 1 regulator.
- They provide legal services, as defined by the Bill, to the public.
- They operate for profit (fee, reward or gain).

173. Currently the cost of regulation is centred around the practicing certificate fee paid by individual legal practitioners. The Bill will allow category 1 regulators to introduce a fee structure similar to that currently in place in England and Wales overseen by the Solicitors Regulation Authority, which takes a hybrid approach to individual fees and that of legal firm's turnover. This provides a fairer system for financing the regulation of legal services.

## **Costs on the Scottish Administration**

174. The proposals at Part 2 of the Bill are not thought to have the potential to result in costs to the Scottish Administration other than those associated generally with the enactment of any new legislation. These are, for instance, printing and publication costs and which are regarded as routine running costs rather than being attributable to the Bill.

## **Costs on local authorities**

175. It is not anticipated that there will be any costs for local authorities as a result of these proposals. The Bill focuses on those who provide legal services to the public for remuneration and that in-house solicitors are largely excepted from the changes being made.

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

### ***Law Society of Scotland***

176. Category 1 regulators will require to oversee a system of entity regulation, in addition to the current system that focuses predominantly on individual regulation.

177. The Law Society anticipates that there will be initial costs associated with developing a regulatory scheme and processes to support entity regulation in the region of £200,000 - £250,000, this is anticipated to comprise of administrative and legal costs. The Law Society will require to consider the provisions within the Bill to provide a final view in respect of the cost.

178. In terms of ongoing costs, the cost of regulation is centred around the practicing certificate fees of individual legal practitioners. The Bill will allow the Law Society to introduce a fee structure similar to that currently in place in England and Wales, overseen by the Solicitors Regulatory Authority (SRA), which takes a hybrid approach based on individual practice fees and fees based on legal firm's turnover. This provides a fairer system for financing the regulation of legal services. The SRA publish a table which sets out how fees are calculated. Examples include a firm with an annual turnover of £0 required to pay the minimum fee of £100, a firm with a turnover of £200,000 required to pay a fee of £1,008, and a firm with a turnover of £279,123,528 required to pay a fee of £375,512.<sup>65</sup>

## **TITLE REGULATION**

179. The Bill at section 82 sets out that any person who is not on a register held by a category 1 or 2 legal services regulator (as required by this Bill), commits an offence if they use the title of lawyer with intent to deceive in connection with providing (or offering to provide) legal services to the public for a fee, gain or reward. Similarly, the Bill creates an offence at section 83 for any

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<sup>65</sup> [SRA | Fee policy 2022/23 | Solicitors Regulation Authority](#)

person to pretending, with intent to deceive, to be regulated by a category 1 or 2 regulator, in connection with providing legal services to the public for a fee, gain or reward.

180. In terms of equivalent protection for the title of ‘advocate’ it is recognised that the title is commonly used in other professional sectors and its use cannot be restricted to the legal profession. As such, the Bill sets out at section 84 that a person who is not a practicing or non-practicing member of the Faculty, commits an offence if they pretend, with intent to deceive, that they are a member of the Faculty.

181. A person who commits an offence under these sections is liable on summary conviction to a fine not exceeding level 4 on the standard scale, this is currently set at £2,500.

### **Costs on the Scottish Administration**

182. The proposals at sections 82 to 84 of the Bill are not thought to have the potential to result in costs to the Scottish Administration other than those associated generally with the enactment of any new legislation. These are, for instance, printing and publication costs and which are regarded as routine running costs rather than being attributable to the Bill.

### **Costs on local authorities**

183. It is not anticipated that there will be any costs for local authorities as a result of these proposals as the Bill focuses on those who provide legal services to the public for remuneration and in-house solicitors are excepted for the purposes of title regulation.

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

#### ***Legal services regulators***

184. It is not anticipated that there will be any additional costs to the Law Society of Scotland, Faculty of Advocates, Association of Commercial Attorneys, or the Scottish Legal Services Commission as a result of these proposals, outwith their current role in seeking to prevent fraudulent activity related to legal services.

#### ***Crown Office and Procurator Fiscal Service and Scottish Courts and Tribunals Service***

185. The costs associated with sections 40 and 82 to 85 of the Bill. The Scottish Government published data on the “Costs of the criminal justice system in Scotland”<sup>66</sup> and this was used to estimate court case costs, updating the most recent data for 2016-17. These are the average “unit costs” associated with pursuing prosecutions through the summary court procedures to estimate the range of total costs. In 2016-17, in cases where COPFS commenced a prosecution, the average costs for a summary case comprise the average prosecution costs of £444; average court costs of

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<sup>66</sup> [Costs of the criminal justice system in Scotland dataset: 2016-17 \(published December 2019\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/costs-of-the-criminal-justice-system-in-scotland-dataset-2016-17)

£430 and Legal assistance of £604. Should a summary prosecution be made under the Bill, the average cost as outlined above would apply. Taking these numbers for 2016-17, and adjusting for inflation, the estimated total for a single case is approximately £2,000. There are costs for the COPFS and the SCTS when prosecution is not commenced, but these are relatively small compared to prosecution.

186. Based on the Scottish Government’s criminal proceedings data set, between 2016-17 to 2020-21 there was 1 person prosecuted in 2018-19 in respect of a charge under the Solicitors (Scotland) Act 1980 Section 23.<sup>67</sup> This charge was found guilty and a fine issued. This was also the only charge under this Act prosecuted in this five-year time period.

**Table 9**

Estimated costs for court prosecutions	Year 1		Year 2		Year 3	
	Min	Max	Min	Max	Min	Max
<b>Total</b>	0	£2,000	0	£2,050	0	£2,100

## LEGAL TECH

187. The Bill at sections 21 to 24 set out that a regulator (or an approved regulator for licensed providers) may, on the application of a legal services provider who is subject to rules of the regulator, direct that a rule or rules do not apply or may be modified to the legal services provider. Such waivers (or in the language used in the Bill, directions of special rule changes) would not be able to be granted in respect of conduct or discipline rules, or the rules relating to the handling of complaints.

188. Any direction would require to be intimated to the Lord President, the Scottish Ministers and published on the regulator’s website.<sup>68</sup> As the Bill requires that the Lord President be informed of any waiver, and also provides that the Lord President may revoke any waiver viewed not appropriate, this will allow an agile approach while also requiring the regulators to be mindful of the Lord President’s oversight. In practice the policy intention is that regulators will be able to grant minor waivers easily and with flexibility, however they will require to factor in discussion with the Lord President’s office in respect of waivers that could be more complex or attract more risk.

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<sup>67</sup> Any person who practises as a solicitor or in any way holds himself out as entitled by law to practise as a solicitor without having in force a practising certificate shall be guilty of an offence.

<sup>68</sup> The Solicitors Regulation Authority register of waivers provides an example of what this may look like [SRA | Register of waivers | Solicitors Regulation Authority](#)

### **Costs on the Scottish Administration**

189. The proposals at sections 21 to 24 of the Bill are not thought to have the potential to result in costs to the Scottish Administration other than those associated generally with the enactment of any new legislation. These are, for instance, printing and publication costs and which are regarded as routine running costs rather than being attributable to the Bill.

### **Costs on local authorities**

190. It is not anticipated that there will be any costs for local authorities as a result of these proposals, as it is not anticipated that in-house solicitors working within local authorities would seek to utilise these measures.

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

191. The Law Society advise that there will be an initial one-off cost to develop the systems and processes for regulatory ‘sandboxes’. There will also be ongoing cost for regulators to monitor the activity of an entity producing a sandbox.

### **CLIENT PROTECTION FUND (GUARANTEE FUND) & PROFESSIONAL INDEMNITY INSURANCE (MASTER POLICY)**

192. The Bill will require all category 1 regulators to introduce and maintain 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.

193. As part of the requirement to set up a compensation fund, the Bill at section 14 will require a category 1 regulator to produce compensation rules which provide detail and structure as to how the compensation fund will operate. In a similar manner to the terms of section 25 of the 2010 Act, compensation rules should detail:

- the monetary amount to be contained in the fund,
- how the fund is to be administered,
- the criteria for qualifying for payment from the fund,
- procedure for making claims for payment and how such claims are to be determined,
- provision for the making of contributions to the fund by regulated members,
- how the fund will be dealt with in the event that the statutory regulator ceases to operate.

194. The 2007 Act places a duty on the SLCC to monitor the effectiveness of the Guarantee Fund and professional indemnity arrangements provided for in the 1980 Act and equivalent compensation funds and arrangements operated by the RPO and make recommendations.



### **Ability of Commission to set minimum standards**

195. The Bill will continue to allow the Commission to monitor the effectiveness of the compensation funds maintained by relevant legal services regulators and consult on any improvements it considers appropriate. Section 70 of the Bill sets out that the Commission will be able to issue guidance which may set minimum standards in respect of the operation and effectiveness of the compensation funds. This would replace the power to make recommendations under the 2007 Act. Regulators would be under a duty to comply with any minimum standards set by the Commission. Where the Commission and the regulators do not agree the Bill requires both parties to consider arbitration. If the dispute is not submitted to arbitration, the Commission may direct that the regulator take such steps as it considers appropriate.

### **Professional indemnity**

196. Section 44 of the 1980 Act sets out detailed provision on what the Law Society's professional indemnity rules must and may contain. It is the policy intention that these rules are not altered in relation to the Law Society other than to reflect the introduction of entity regulation. All category 1 and 2 regulators, including any new regulator of either category, would be required to adhere to the same rules in terms of its own professional indemnity obligations.

197. As set out earlier in this memorandum the Bill will require that a regulator's practice rules must include rules concerning indemnity for its members against any class of professional liability. The new provision would require all new and existing statutory regulators to have rules which require members to keep sufficient arrangements for professional indemnity. The role of the Commission in monitoring and making recommendations about the effectiveness of indemnity insurance will remain unchanged.

### **Costs on the Scottish Administration**

198. The proposals at sections 14 of the Bill are not thought to have the potential to result in costs to the Scottish Administration other than those associated generally with the enactment of any new legislation. These are, for instance, printing and publication costs and which are regarded as routine running costs rather than being attributable to the Bill.

### **Costs on local authorities**

199. It is not anticipated that there will be any costs for local authorities as a result of these proposals. The Bill focuses on those who provide legal services to the public for remuneration and that in-house solicitors are largely excepted from the changes being made.

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

200. The Law Society advise that there will be initial cost to review that they are compliant with any new legislative requirements. In addition, there may be ongoing additional costs periodically and dependant on what and if any minimum standards are imposed by the Commission and any

review of those standards the Commission determines. The maximum grant from the Fund is set at £1.25 million.<sup>69</sup>

### ***Scottish Legal Services Commission***

201. The 2007 Act gives the SLCC powers to monitor the effectiveness of professional indemnity arrangements.<sup>70</sup> In November 2021, following an invitation to observe the tender of the Master Policy carried out by the Insurance Committee of the Law Society, the SLCC published a report<sup>71</sup> which reflected on the process of the tender and made recommendations for future exercises. It also considered wider issues relating to the effectiveness of the indemnity arrangements. As a function currently carried out by the SLCC, it is anticipated that the proposals in this Bill will have minimal cost implication to the current framework.

202. The recommendations of the SLCC's review were that the Law Society should consider setting out a clear policy statement on the overall purpose of indemnity insurance arrangements for the solicitor profession, and the role of the Master Policy specifically in achieving the stated aims. There should be a clear role and opportunity for the Regulatory Committee to input to the approach and wider thinking on how indemnity arrangements support both consumer protection and public confidence. The tender process should begin with a clear statement of rationale and purpose of the tender and the services required. Any market analysis should be thorough and include discussions with providers who chose not to tender (to remove barriers and for future learning) and due diligence regarding any potential conflicts. The decision making process should be set out clearly and transparently to both the profession and the public – it is vital that both groups have confidence in the way decisions are made, and the opportunity to input, question and challenge them, as required. The Law Society should ensure that learning from the operation of the Master Policy, including the views of the profession and claimants, informs future decision making.

## **LEGAL COMPLAINTS SYSTEM**

203. The handling of complaints is one of the most important parts of any regulatory system. It is crucial that users of legal services have access to an efficient, effective and fair process for dealing with their complaint. Equally, legal professionals rely on a complaints system which is efficient, effective and can resolve complaints in an impartial manner.

204. The Bill will reconstitute the SLCC as the Scottish Legal Services Commission (the Commission). Its core functions will be retained and developed. It will have oversight of complaint

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<sup>69</sup> [client protection fund guidance.pdf \(lawscot.org.uk\)](https://www.lawscot.org.uk/client-protection-fund-guidance.pdf)

<sup>70</sup> Legal Profession and Legal Aid (Scotland) Act 2007, Section 39

<sup>71</sup> [Master Policy \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk/master-policy)

handling of the regulators, as it does now. It will continue to have a role in monitoring trends in legal complaints.<sup>72</sup>

205. The legislation surrounding legal complaints will be simplified to allow the Commission to take a proportionate and risk-based approach to complaint handling, in consultation with the Lord President, the Scottish Ministers, regulators, the Consumer Panel and groups representing the interests of the legal profession as appropriate. The Commission will be required to adhere to the regulatory objectives and act as a neutral body, balancing the interests of consumers and legal services providers.

206. In addition, the Bill seeks to promote collaboration between the Commission and the legal services regulators in respect of improving the complaints system based on trends in complaints. The Bill places a greater duty on consultation between the Commission and regulators in relation to the complaints system.

207. Where the Commission is setting minimum standards there will be a duty on the Commission to consult with the regulators in advance to give them an opportunity to provide comment and require the Commission to have regard to the views of the regulators. The policy intention is to incorporate greater quality assurance and continuous improvement in terms of the impact of regulatory performance and handling of conduct complaints on consumers based on trends in complaints raised.<sup>73</sup> In any case where the Commission and a regulator find themselves in dispute, the Bill requires both parties to consider whether the dispute should be submitted to arbitration.

208. As set out earlier in this memorandum, legal services are regulated because of their vital importance in supporting the rule of law and access to justice. That places a regulatory burden on them to ensure they meet the required standards, but also delivers certain privileges in terms of market access. The view of the Scottish Parliament in establishing the SLCC, was that it would be appropriate for the legal complaints system to be funded by those it oversees. This is a common feature of regulatory frameworks in other professions and jurisdictions. This is the case in respect of the Legal Ombudsman in England and Wales. The policy intention is to retain the current funding model in which the legal complaints system is funded by a levy on the legal profession. However, with the introduction of entity regulation the Commission will be able to introduce a fairer system, through a levy on both individual legal practitioners and legal businesses, based on their financial turnover, and licenced providers. The Commission will also continue to be able to recover expenses in discharging its functions.<sup>74</sup>

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<sup>72</sup> Forwarding complaints, advice, monitoring [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>73</sup> Strengthening S40 of the Legal Profession and Legal Aid (Scotland) Act 2007.

<sup>74</sup> Particularly relevant in respect of unregulated providers.

## **Costs on the Scottish Administration**

209. In respect of Part 3 of the Bill, and as explored in the Legal Services Regulatory Framework section of this memorandum, the initial transition costs of the Scottish Legal Services Commission will be funded by the Scottish Government.

## **Costs on local authorities**

210. While local authorities employ solicitors, the Bill focuses on those who provide legal services to the public for remuneration and that in-house solicitors are largely excepted from the changes being made, so there will be very little impact as far as they are concerned.

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

### ***The complaints system***

211. The analysis below sets out estimated costs on the Scottish Legal Services Commission resulting from the Bill. As the SLCC budget is based on trends in legal complaints this information to provide an example of what the cost could look like in future.

212. The SLCC is funded by a levy paid by legal professionals operating in Scotland. The Legal Profession and Legal Aid (Scotland) Act 2007 sets out that the SLCC must consult each January, publish responses to the consultation in March, and lay a budget before the Scottish Parliament in April each year. The 2007 Act requires that the budget must be reasonably sufficient to cover expenditure.

213. The SLCC operates independently of both the Scottish Government and the legal profession and as such, neither have the powers to interfere with its operation. The SLCC receives no funding from the Scottish Government. It is for the SLCC to determine both the annual general levy and the complaints levy to be paid by the legal profession, in accordance with the 2007 Act.

214. The SLCC's approach to budgeting undertakes a review the last three years financial and operational performance. The SLCC estimates incoming complaint volumes, business needs, lawyer numbers, work required by law anticipated under the SLCC's strategy, and other factors. Projections of income, expenditure and reserves are created (normally in three-year cycles) and mapped to the Scottish Government's five year financial strategy in order to give a wider public sector context. On the basis of this data, the SLCC then sets out its anticipated expenditure on its operational plan. In simple terms the SLCC bases the levy on the profession, assessing the number of legal professionals anticipated to contribute to the levy, and the estimated number of complaints likely to be raised, based on its analysis of past complaint numbers.

215. The budget including the proposed levies is issued for consultation. Consultation responses are considered and finally, the Board approves the final budget. Section 29(10) of the 2007 Act states that the Commission must lay a copy of the finalised budget before Parliament by 30 April.

***Cost on the legal profession***

216. As set out, the cost of the complaints system is funded by the annual general levy on the legal profession.

**Table 10**

<b>Number of legal professionals contributing to the levy</b>	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
	11,836	12,054	12,301	12,605	12,736	13,126
Number of new Complaints	1,227	1,326	1,036	1,054	1,159	1,195
Annual general levy	£3.2m	£3.5m	£3.9m	£4m	£3.9m	£3.5m

***Trends in legal complaints***

**Table 11**

<b>Area in which complaints are raised<sup>75</sup></b>	
Residential Conveyancing	24%
Executries, Wills and Trusts	23%
Family Law	15%
Litigation	11%
Personal conduct	7%

**Table 12**

<b>Substance of complaints<sup>76</sup></b>	
Communication	22%
Failure to act in the best interests of the client	18%
Trust & Personal Integrity	9%
Delay	8%
Failure to advise adequately	8%

<sup>75</sup> Page 8 [SLCC Annual Report \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk)

<sup>76</sup> Page 9 [SLCC Annual Report \(scottishlegalcomplaints.org.uk\)](https://www.scottishlegalcomplaints.org.uk)

**Table 13**

<b>Category of Complaints accepted by the SLCC for investigation</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
Service complaints	347	337	271	324
Conduct complaints	216	155	93	113
Hybrid complaints where the service parts are investigated by the SLCC. The conduct parts are investigated by the relevant regulator	172	94	79	59

217. The trends in legal complaints demonstrate that the majority of legal complaints relate to services, the most common complaint being about communication. This suggests that a greater focus on continuous improvement and prevention of failure, based on trends in the types of legal complaints raised, 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. This analysis is the basis for strengthening the oversight functions of the Commission, in terms of setting minimum standards for complaint handling.

218. The Bill will introduce a proportionate, more efficient and better targeted system to benefit consumers and the sector and address concerns that the current arrangements for legal complaints system, and how complaint outcomes are used to improve standards in the legal sector, are too complex and involve too many stages.

219. The largest potential saving to the Commission may be realised if legal complaints are reduced through a greater focus on quality assurance and prevention.

220. The Bill will introduce a fairer system in the way in which the legal complaints system is financed by providing the Commission with the power to base the levy on a hybrid system of individual legal professional and legal firm turnover, this will link to entity regulation of legal firms.

221. The current more restrictive complaints system is not only less efficient but more expensive to the legal profession and consumers, a more flexible approach is anticipated to reduce costs.

222. This financial memorandum provides a background as to the complexities in the current complaints system, and sets out the measures the Bill will take to provide for a more proportionate and risk based system.

223. The cost of the annual general levy on the legal profession is inherently linked to the operating cost of the Commission, and potential savings are explored in more detail below.

**Scottish Legal Services Commission**

224. The Robertson report found that too much detail is set in legislation on the processes that the SLCC is required to follow, and as a result has limited the ability of the SLCC to respond to complaints proportionally. The legislation also restricts the opportunity to make any significant improvement to the process. As a key area for reform, there is potential for savings by introducing a more proportionate and risk-based system for legal complaints. The current administrative costs of the Commission are set out below are set out below.

**Table 14**

<b>SLCC administration costs</b>	<b>2020/21</b>	<b>2021/22</b>
Property	£354,000	£350,000
Office	£63,000	£64,000
Staff Training & Recruitment	£43,000	£80,000
Travel & hospitality	-	£4,000
IT	£142,000	£200,000
Outreach	£16,000	£29,000
Research	£27,000	£32,000
Legal	£155,000	£292,000
Financial	£26,000	£39,000
Other Professional Fees	-	£4,000
Bad Debt Provision	£23,000	£31,000
<b>Total</b>	<b>£849,000</b>	<b>£1,125,000</b>

225. An analysis of the current administrative costs of the SLCC demonstrate that around 70% of its expenses relate to staffing. We anticipate that the future costs of the Commission will retain a similar ratio as case handlers undertake the majority of the SLCC’s functions in terms of investigating complaints.

**Table 15**

	2021		2022		
<b>SLCC staff and salary costs:</b>	CEO, Senior management team & staff	CEO, Senior management team & staff	Board members	CEO, Senior management team & staff	Board members
Number of staff	51	56	9	51	7
Salaries	£2,078,000	£2,186,000	£67,000	£2,078,000	£55,000
Social security costs	£201,000	£208,000	£2,000	£201,000	£1,000
Pension costs	£166,000	£179,000	-	£166,000	-
<b>Total salary costs</b>	<b>£2,445,000</b>	<b>£2,573,000</b>	<b>£69,000</b>	<b>£2,445,000</b>	<b>£56,000</b>

**Table 16**

<b>SLCC Budget and Staffing</b>	<b>Total Levy Funding – income</b>	<b>Staffing (FTE)</b>	<b>Staffing as % of total spend</b>
2020-21	£3,860,759	55.51	71%
2021-22	£3,673,926	52.86	67%
2022-23	£3,508,059	55.17	71%

226. It is difficult to quantify the impact of the proposals in this Bill on the cost of the complaints framework. However, the measures in this Bill seek to remove restrictive barriers currently set out in statute that limit both the Commission and the regulators from making improvements which will lead to efficiencies and reduce the number of legal complaints. The following tables present an illustration of how the costs under a reformed complaints system may look.



**Table 17**

<b>2022/23 annual general levy based on the most recent peak of £4m</b>			
Potential levy based on saving due to efficiency	5%	10%	15%
	£3.8m	£3.6m	£3.4m

227. Table 17 presents an example of potential savings from efficiencies in the complaints system resulting from the measures in Part 3 of the Bill. This demonstrates the potential savings as a result of providing for a more proportionate and risk-based complaints system that is able to operate with more flexibility.

**Table 18**

<b>Potential levy based on a reduction in legal complaints<sup>77</sup></b>		
5%	10%	15%
£3.7m	£3.5m	£3.3M

228. Tables 18 presents an example of potential savings from a reduction in legal complaints due to an increased focus on quality improvement and prevention of failures.

229. The figures are presented separately and do not account for compounded savings as a result of both, but illustrate that the measures in this Bill are designed of reduce the cost of the legal complaints system on both the legal sector and consumers.

### ***Unregulated legal services***

230. The Bill will allow the Commission to investigate complaints about the provision of legal services to the public, for a fee, gain or reward, by those individuals and bodies which are not members of a category 1 or 2 regulator or an approved regulator. Section 65 of the Bill sets out that the Commission may establish a voluntary register of unregulated legal services providers, however this will not prevent the Commission from investigating complaints about those providers who do not join the register. This would provide a risk-based and proportionate approach to the unregulated sector, offering a ‘kitemark’ for those providers who wished to join.

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<sup>77</sup> Based on the average number of new complaints raised with the SLCC over the last five years, and the average cost of a complaint in these years.

231. It is anticipated that this measure will be funded by those who join the register. The Commission would be required to produce rules as to how the eligibility of such complaints will be assessed, and require to set a levy in consultation with its stakeholders. It is expected to set a narrow scope in the types of complaints it will investigate to begin with and expand this over time as it develops a greater understanding of the unregulated sector. The sanctions currently available to the Commission would apply to unregulated legal services providers. The current levy on individual legal professionals ranges from around £100 to £400 and so it is anticipated the levy on regulated legal services providers would be within this range. The Commission would continue to be able to recover expenses in discharging its functions.<sup>78</sup>

### ***Appeals***

232. The SLCC paper Reimagine Regulation highlights the various points at which an appeal can be raised in the complaints system and calls for a single opportunity to appeal at the conclusion of the process.

233. The consultation analysis found that the Court of Session is considered to be too expensive, for both consumers and legal professionals, limiting accessibility. Part 3 of the Bill will introduce a new process for complaints relating to service. The intention is to make the appeals system for complaints more affordable and accessible. As with other public bodies, decisions of the Commission would remain open to judicial review. In complaints relating to professional conduct the relevant professional discipline tribunal will retain oversight of appeals, with the current routes of appeal remaining.

234. This is similar to the position in England and Wales for services complaints, where there is no process by which the legal ombudsman's decision can be appealed. The Legal Ombudsman in England and Wales received 12 judicial review claims in 2021/22.<sup>79</sup> The average cost of a judicial review can vary depending on the complexity of the case.

235. The current system for appeals about legal complaints has a significant impact on the legal costs of the SLCC.

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<sup>78</sup> Particularly relevant in respect of unregulated providers.

<sup>79</sup> [Annual update on legal enforcement and legal work.pdf \(legalombudsman.org.uk\)](https://www.legalombudsman.org.uk/annual-update-on-legal-enforcement-and-legal-work.pdf)

**Table 19**

<b>SLCC Appeal Costs</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
	£109,859	£232,881	£269,793	£116,208	£177,416
Annual general levy (under the current appeal process)	£3.2m	£3.5m	£3.9m	£4m	£3.9m
Annual general levy (under Part 3 of the Bill, without appeal costs to the SLCC)	£3m	£3.2m	£3.6	£3.8	£3.7

236. In 2021/22 the SLCC levy on the profession totalled £3.9m.<sup>80</sup> Approximately 12,736 legal professionals contributed to the levy in that period. While the levy amount that each legal professional is required to pay is set at a different rate depending on their level of experience and branch of the profession,<sup>81</sup> by removing the legal appeal cost of the SLCC in that period, an average saving of 5% could be applied to the cost of the levy that each legal professional is required to contribute.<sup>82</sup>

### ***Tribunals***

237. The Bill at sections 26 and 73 will place a requirement on each relevant tribunal or equivalent upper chamber to publish judgments about professional misconduct findings in a transparent way and with the intention of increasing public confidence.

238. This is currently a feature of the SSDT, therefore it is not anticipated that this measure will affect the cost to the SSDT.

239. The Faculty and the ACA have advised that this is estimated to be met within existing budgets.

### **CONCLUSION**

240. The estimates within this Financial Memorandum are intended to provide an example of the impact of the provisions in this Bill on the Commission and the legal services regulators. The content and structure of their budgets will depend on decisions made by the Commission and the legal services regulators.

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<sup>80</sup>[SLCC Annual Report and Financial Statements 2021-2022 \(scottishlegalcomplaints.org.uk\)](https://scottishlegalcomplaints.org.uk)

<sup>81</sup>[slcc-budget-2021-22.pdf \(scottishlegalcomplaints.org.uk\)](https://scottishlegalcomplaints.org.uk)

<sup>82</sup> This is based on the total levy in this year divided by the total number of legal professionals contributing to the levy, firstly including the appeal cost, and then without it. This equates to a saving of around £14 per legal professional.

**Table 20**

<b>SUMMARY OF ESTIMATED COSTS IN RELATION TO THE REGULATION OF LEGAL SERVICES (SCOTLAND) BILL</b>			
<b>THE SCOTTISH ADMINISTRATION</b>			
Falling on	Nature of Cost	One off cost	Ongoing costs
<b>The Scottish Government</b>	<b>Regulatory Framework</b> , transition costs associated with Part 3 of the Bill.	£645,000 (Table 3)	-
<b>Scottish Government</b>	<b>Standards, monitoring &amp; reporting</b> , Review of regulatory performance associated with sections 19 & 20 of the Bill.	-	Estimated as £11,426 per review (Table 6)
<b>Scottish Government</b>	<b>Business structures</b> , associated with sections 78-80 of the Bill.	-	Estimated as £11,426 per application (Table 7)
<b>Scottish Government</b>	<b>Rights to litigate &amp; rights of audience</b> , associated with Part 1 Chapter 3 of the Bill.	-	Estimated as £11,426 per application (Table 8)
<b>OTHER BODIES, INDIVIDUALS AND BUSINESSES</b>			
Falling on	Nature of Cost	One off costs	Ongoing costs
<b>The Law Society</b>	<b>The regulatory objectives and professional principles</b> , associated with sections 2-4 of the Bill.	Estimated as £250,000	
<b>The Law Society</b>	<b>The legal services regulatory framework</b> , costs associated with sections 9 to 14, and sections 17 to 18 of the Bill.	The Law Society advise that amount of cost, and whether it can be absorbed into existing budget, largely	£5.6M (pre-existing cost)

*This document relates to the Regulation of Legal Services (Scotland) Bill (SP Bill 25) as introduced in the Scottish Parliament on 20 April 2023*

<b>The Law Society</b>	Freedom of Information	depends on the extent to which the Bill requires a separation of regulatory and representative staff and systems.	£6,000 per annum
<b>The Scottish Solicitors' Discipline Tribunal</b>	Current expenditure	-	£200,000 (pre-existing cost)
<b>The Faculty of advocates</b>	<b>The regulatory objectives and professional principles,</b> associated with sections 2-4 of the Bill.  <b>The legal services regulatory framework,</b> costs associated with sections 15 to 18 of the Bill.	-	The Faculty will not require to make changes to its structure as a result of the Bill, ongoing costs are anticipated to be met within existing budgets, the cost of regulating advocates is estimated at around £400,000 per annum.
<b>Association of Commercial Attorneys</b>	<b>The regulatory objectives and professional principles,</b> associated with sections 2-4 of the Bill.  <b>The legal services regulatory framework,</b> costs associated with sections 15 to 18 of the Bill.	-	The ACA does not publish costs associated with regulatory functions, however ongoing costs expected to be met within existing budget.
<b>Category 1 &amp; 2 Regulators</b>	<b>Standards, monitoring &amp; reporting,</b> Review of regulatory performance associated with sections 19 & 20 of the Bill.	-	Estimated at around £20,000 - £100,000 per review.

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<b>The Law Society of Scotland</b>	<b>Business structures,</b>  Review and update the regulatory scheme and application forms, associated with sections 78-80 of the Bill.	Advised there will be an initial one off cost, however not viewed to be significant. Applications costs and ongoing compliance costs for some licensed legal services providers may increase. Anticipated an initial application fee on providers will be set out with an annual licence fee based on a firm's annual turnover.	
<b>Body seeking to become an authorised regulator</b>	<b>Business structures,</b>  Application to Scottish Ministers and regulatory costs, associated with sections 78-80 of the Bill.	£50,000 - £100,00 estimated application cost.	Any new entrant to the legal services market would be expected to contribute to the core regulatory costs such as the annual general levy
<b>The Law Society of Scotland</b>	<b>Entity regulation,</b>  associated with Part 2 of the Bill.	£200,000 - £250,000 (estimated)	Ongoing cost anticipated to be met within existing budgets.
<b>Crown Office and Procurator Fiscal Service and Scottish Courts and Tribunals Service</b>	<b>Offences created by the Bill,</b> costs associated with sections 40, and 82-85 of the Bill.	-	£2,000 (estimated per offence)
<b>The Law Society of Scotland</b>	<b>Legal Tech,</b> costs associated with sections 21-24 of the Bill.	The Law Society advise that there will be an initial one-off cost to develop the systems and processes for regulatory 'sandboxes'. There will also be ongoing cost for regulators to monitor the activity of an entity producing sandbox.	
<b>Category 1 &amp; 2 Regulators</b>	<b>Client protection fund (guarantee fund) &amp; professional indemnity insurance (master policy),</b> costs associated with sections 14 & 18 of the Bill	There will be an initial cost of regulators to review that they are compliant with any new legislative requirements. In addition, there may be ongoing additional costs periodically and dependent on what and if any minimum standards are set by the Commission and any review of those standards.	

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<p><b>Scottish Legal Complaints Commission</b></p>	<p><b>The legal complaints system,</b> costs associated with Part 3 of the Bill.</p>	<p>-</p>	<p>The measures in the Bill are designed of reduce the cost of the legal complaints system on both the legal sector and consumers, the estimated cost of the Commission is anticipated to range between £3.5m and £4m per annum.</p>
<p><b>Tribunals</b></p>	<p>Publication of judgements, costs associated with sections 26 &amp; 73 of the Bill.</p>	<p>This is currently a feature of the SSDT and it is anticipated that this measure will not affect the cost to the SSDT, in respect of advocates and commercial attorneys this is estimated to be met within existing budgets.</p>	

*This document relates to the Regulation of Legal Services (Scotland) Bill (SP Bill 25) as introduced in the Scottish Parliament on 20 April 2023*

# **REGULATION OF LEGAL SERVICES (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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