



41st European Conference of Presidents of Bar Associations and Law Societies Vienna, 7 – 9 February 2013

The Law Society of Scotland is the professional body for Scottish solicitors. Our strategic aim is to lead and support a successful and respected Scottish legal profession, which is underpinned by five objectives:

- Excellent solicitor professionalism and reputation
- Our members are trusted advisers of choice
- Our members are economically active and sustainable
- The Society is the professional body and regulator of choice
- The Society is a high performing organisation

More information on our 'Towards 2020' strategy and 2012/13 corporate operating plan is available via <http://www.lawscot.org.uk/about-us>.

Below are some examples of current work in which the Society is involved.

Independence referendum

In the 2011 Scottish elections, the Scottish National Party secured a majority in the Scottish Parliament on a manifesto pledge to give 'Scots the opportunity to decide our nation's future in an independence referendum'. In October 2012, after more than eight months of negotiations, the Scottish First Minister and the UK Prime Minister signed a detailed 30-clause agreement in Edinburgh to stage a referendum before the end of 2014 asking a simple yes or no question on whether Scotland should become independent.

The agreement provided for:

- A statutory order to be legislated at Westminster, granting the Scottish Parliament powers to hold a single-question independence referendum by the end of 2014 and covering other issues like campaign broadcasts.
- A "memorandum of agreement" to be signed by political leaders confirming the details of the referendum will be settled by the Scottish Parliament.
- A significant role for the UK Electoral Commission watchdog in advising on the wording of the question, the running of the referendum and areas including campaign finance.
- The right to vote in the referendum for 16 and 17 year olds.

There had been debate on whether the referendum would also include a second question of whether additional powers should be devolved from the UK Parliament to the Scottish Parliament should Scots vote to remain part of the United Kingdom. However, it has been agreed that the referendum will take the form of a single question

of Scotland's membership of the United Kingdom. It is now expected that the referendum will take place in October 2014 and official campaigns for both a 'yes' and 'no' vote have been launched.

As the professional body of Scottish solicitors, the Law Society of Scotland has access to significant knowledge and expertise on constitutional and other legal areas. We know from research carried out across the political parties that the Society is a highly respected and much valued organisation. We therefore have much to offer the debate on Scotland's constitutional future and a reputation which means that contribution is likely to be listened to. Equally, we are recognised as being neutral in a party political sense. Consequently, we have a key opportunity to influence a significant debate within Scotland.

The Society has agreed a strategy to guide its work on the independence referendum over the next two years. The organisation will not take a view for or against independence but has agreed objectives:

1. To help create a reasoned and informed debate on Scotland's constitutional future by scrutinising proposals for change and raising key questions which need to be answered in advance of October 2014
2. To ensure the views of the solicitor profession are properly taken into account by helping to link our members with political parties and formal referendum campaign organisations.

We have set up a Working Group on Scotland's Constitutional Future which has worked up a position and project plan to fulfill the Society's Corporate Plan objective of ensuring that "the views of the solicitor profession are properly considered throughout the debate on Scotland's Constitutional Future and highlight key issues for Scotland's political parties to consider".

We are currently conducting an internal exercise to consider how independence or increased powers for the Scottish Parliament would impact a number of different subject areas including Scotland's place in the European Union, the impact of independence on the economy and business as well as judicial and parliamentary reform. Equally, the Society has thought it important to carefully scrutinise the proposals of pro-UK parties which would involve further devolution of powers to the Scottish Parliament.

The Internal Group's plan is to publish for consultation a report on the legal issues which might arise from independence or additional powers to the profession and the wider public during the course of spring 2013.

For further information about the independence debate and the work of the Society in relation to this, please contact our Director of Communications, Marketing & Public Affairs, Kevin Lang (kevinlang@lawscot.org.uk).

Access to Justice

Two main events took place in 2012 that could have a major impact on access to justice for Scots. The Scottish Courts Service (SCS) consultation [Shaping Scotland's Courts](#), published on Friday 21 September, considers proposals to close 11 of Scotland's 49 sheriff courts, threatening access to justice for communities across Scotland, particularly those in rural areas.

The consultation results from the Scottish Government's budget plans, which will see the SCS budget reduced from £79.9m in 2011-12 (£69.5m resource and £10.4m capital) to £69.5m in 2014-15 (£65.5m resource and £4.0m capital). This is in addition to spending on courts, judiciary and tribunals, which includes, the Judicial Appointments Board, the Tribunal Service and judicial salaries.

In our response to the consultation, we expressed deep concerns about the impacts of the proposals and stressed the need for four principles for the justice system in Scotland to be observed:

- it should meet the needs of everyone and be based only upon legal need;
- it should provide a comprehensive range of services to meet the needs of our population;
- it should work with others to provide a holistic service to people in need; and
- it should support and value those who use and work in the legal advice and information services.

In addition, the proposed changes should be considered along with the principles required of a democratic society, complying with the requirements of the European Convention and providing access to justice for citizens in Scotland, namely:

- Courts should be public
- Courts should be local
- Courts should be efficient
- Courts should be accessible

We believe that there is a reasoned discussion to be had on the location of courts, not to preserve each and every location, but to provide a reasonable spread of courts, so that the citizens of Scotland are least deterred from attending.

Furthermore, we think that there are a number of opportunities to drive through efficiency savings to the current court administration (electronic raising and case management, bulk processing, increased mediation).

In addition to the proposals raised in the consultation paper, Scottish solicitors working in the criminal legal aid sphere have felt compelled to resort to direct protest action, including a refusal to take on new legal aid court cases, following the Scottish Government's refusal to reconsider provisions contained in the Civil Justice Council and Criminal Legal Assistance (Scotland) Bill, which was published in May 2012. Among a

number of proposals, it seeks to introduce financial contributions into criminal legal aid and makes changes to financial eligibility in criminal legal assistance.

The Bill also includes a provision which would require individual solicitors to collect the contributions from clients in summary legal aid cases.

While the Society agrees that people who can afford to pay a portion of the cost of their legal aid should do, we have raised a number of serious practical concerns, particularly around the financial threshold for contributions and how they will be collected.

The Government has since agreed to raise the eligibility threshold from its original proposal of £68 disposable income a week to £82. However, it also stated that the proposed increase in the eligibility threshold would have to be funded from elsewhere in the legal aid budget.

We welcome the proposal to increase the eligibility threshold and have been engaging with the Scottish Government and Scottish Legal Aid Board to discuss further changes. The Bill itself is due to receive its final parliamentary debate at the end of January.

For further information, please contact our Head of Access to Justice, Andrew Alexander (andrewalexander@lawscot.org.uk)

Legal Services (Scotland) Act

On 3 December, the Society submitted its application to the Scottish Government to become an approved regulator of new licensed legal service providers, marking a major milestone step towards the arrival of new types of legal businesses in Scotland.

The new structures, permitted under the Legal Services (Scotland) Act 2010, will allow solicitors to set up in business with non-solicitors for the first time.

The Society's Council approved the draft scheme for regulating licensed legal services providers (LPs) at a meeting on Friday 23 November. In a referendum of the Scottish solicitor profession in 2010, 81% of voting members backed the Society applying to become an approved regulator.

The Scottish Government must now consider and approve the draft scheme before we can be authorised as an 'approved regulator' of the new legal services providers. While there is more work to be done by us and the Scottish Government, all the indications are that, if the application is approved, the Society could become a regulator by spring 2013, with the first LPs expected to be authorised soon after that.

For further information, please contact our Regulatory Project Manager, Samantha Hollywood (samanthahollywood@lawscot.org.uk).