

LAW SOCIETY OF SCOTLAND COUNTRY REPORT

The Law Society of Scotland is the professional body for over 13000 Scottish solicitors and was established in 1949. Our Strategy ([insert link](#)) commits us to lead legal excellence, and aim to be a world-class professional body, understanding and serving the needs of our members and the public. As part of our regulatory duties, we set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's legal profession.

The Law Society also has a statutory duty to work in the public interest. We are strongly committed to working in the interests of the public and the profession and to protecting and promoting the rule of law. We promote a strong, varied and effective legal profession. We seek to influence the creation of a fairer and more just society through active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

This year have been two key areas of work:

- Engaging with the Scottish Government's consultation on legal services regulation, working to ensure reform is considered a priority within the Scottish Parliament
- Engaging with the Scottish Government's Victims, Witnesses, and Justice Reform (Scotland) Bill

For more information about our work, visit: <https://www.lawscot.org.uk/>

1. Regulation of Legal Services (Scotland) Bill

The Bill represents the biggest shake up of the regulation of solicitors in well over a decade. It would introduce new forms of regulation over legal businesses, changes to the way complaints are handled, and new restrictions over who can and cannot call themselves a lawyer. Alarming, it also proposes sweeping new powers for Scottish Ministers to, for the first time, intervene directly in the regulation of solicitors

Much of the legislation covering legal regulation in Scotland is well over 40 years old. It's why the Law Society went to the Scottish Government back in 2015 to argue for reforms to modernise the regulatory framework. Scottish Ministers set up an independent review of legal services regulation in 2017 (the Robertson review) and consulted on the report recommendations in 2021. The Bill is the culmination of this work.

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The Bill would introduce:

- new regulation over legal businesses
- changes to complaints handling
- restrictions over who can call themselves a lawyer
- new powers for Scottish Ministers to intervene in the regulation of solicitors

We welcome many of the reforms, not least because we requested many of them. New proposals for business (entity) regulation and restrictions around who can call themselves a lawyer are positive. There are also some process improvements which should help speed up elements of our work to take regulatory action when we need to. However, many of the suggestions we made for system improvements are absent from the Bill, particularly around complaints handling. We hope this can be addressed as the Bill progresses through parliament.

For instance, we agree that the system for dealing with legal complaints is not working. The current set up is too slow, too rigid, too complex and increasingly expensive. The Bill includes positive changes which should help the Scottish Legal Complaints Commission deal with the eligibility stage of complaints more quickly. We also welcome new provisions allowing the Law Society to start our own complaints investigations when we want to, without having to go through the SLCC. However, we want the Bill to go further and have sought new powers which would allow us to dispose of conduct cases early in limited circumstances. We also want to widen our limited powers to suspend a solicitor on an interim basis when possible serious wrongdoing is uncovered or to restrict a solicitor's practicing certificate when necessary.

We have also long argued for new controls over who can call themselves a 'lawyer'. It is concerning that anyone, including those without any legal education, qualification or accreditation, can legitimately call themselves a 'lawyer' and offer legal services for profit. We believe the current unrestricted use of the title 'lawyer' poses a significant risk to consumers who do not differentiate between a 'solicitor' and a 'lawyer' and are therefore potentially being misled. We think the provision in the Bill could be even stronger and will make this argument.

However we have a number of significant concerns. The greatest of these is the Scottish Government's attempt to get exceptional new powers of intervention over how legal professionals are regulated. These powers, which we have not identified in any other western democracy, risk undermining the rule of the law and the independence of Scotland's legal sector from the state. A key component of a free and democratic society is having an independent legal profession that can challenge government and protect citizens from the excessive use of power by the state. That is why it is so concerning that the state, through government, could direct or control how legal professionals work.

The Bill would empower the Scottish Government to direct the Law Society to take certain action, to censure or fine us as a regulator, or even remove our regulatory functions altogether. Scottish Ministers also want, for the first time, a direct role in approving rules on how existing law firms operate and the practice of solicitors. The Scottish Government could even appoint itself as a regulator of legal businesses. It opens the prospect, never before suggested, that the state could regulate law firms directly. These are levels of political control and intervention never before seen in the Scottish legal sector.

You can read more in our response to the Scottish Parliaments consultation on the Bill:
<https://www.lawscot.org.uk/media/375069/regulation-of-legal-services-scotland-bill-call-for-evidence-response-of-the-law-society-of-scotland-27-july.pdf>

2. Scottish Government's consultation on the Scottish Government's Victims, Witnesses, and Justice Reform (Scotland) Bill

The Bill makes changes to the law to try to improve the experience of victims and witnesses in the justice system. The Bill also makes changes to the criminal justice system to try to improve the fairness, clarity and transparency of the framework within which decisions in criminal cases are made.

Whilst we support the overall aim of the legislation to deliver a more person-centred approach to practices within the Scottish criminal justice system, but fundamental changes such as the introduction of judge only trials and the abolition of the not proven verdict must not be made at the expense of the right to a fair and just trial.

These proposals to reform Scotland's criminal justice system must not undermine the fundamental right to a fair trial. The Bill proposes a pilot of judge only trials in sexual offence cases and the abolition of the not proven verdict.

The right to a fair trial is a cornerstone of the Scottish criminal Justice system. Even on a pilot basis, judge only trials will put that fundamental right in jeopardy with no discernible



benefits. By its very definition, a jury is a better reflection of Scottish society than a single judge can possibly be. Juries act as an essential and effective safeguard against the potential for unconscious biases to unfairly influence trial outcomes. Equally undermining the foundations of the Scottish justice system to increase conviction rates is a dangerous approach which will create a serious risk of injustice.

More information can be found on the bill here:

<https://www.parliament.scot/bills-and-laws/bills/victims-witnesses-and-justice-reform-scotland-bill>

Our Presidents initial response can be found here:

<https://www.lawscot.org.uk/news-and-events/law-society-news/law-society-comment-on-victims-witnesses-and-justice-reform-bill/>