



Current Developments at the Scottish Bar

From 2020-2026

Introduction

Since 2020, Scotland has experienced a period of extensive legal and institutional reform, reshaping the justice system, the regulation of legal professionals, and the delivery of legal services. As an independent regulatory body, these developments carry significant implications for the Faculty of Advocates, impacting courtroom practice, regulatory responsibilities, professional training, and long-term strategic planning. While some areas of reform are yet to be implemented, the Faculty remains active in lobbying to protect the independence of the legal profession, maintain professional standards and promote the importance of fair trial rights.

Transformation of the Criminal Jury System

Perhaps one of the most significant changes relates to the Scottish Parliament passing the Victims, Witnesses & Justice Reform Bill in 2025. This abolished the longstanding *not proven* verdict, a historic shift impacting defence strategy, prosecutorial assessments, and jury directions. The reform also introduced a new two thirds majority requirement for conviction, recalibrating the threshold from a simple majority to at least 10 of 15 jurors.

The removal of the *not proven* verdict represents a profound change to criminal trial practice. Its elimination alters the strategic landscape of criminal advocacy. Advocates, particularly those practicing in serious criminal cases, must now structure submissions exclusively around *guilty* or *not guilty* outcomes, requiring adjustments to closing speeches, evidential analysis, and handling of reasonable doubt.

Alongside abolishing *not proven*, the reform package introduced a substantial change to jury majority requirements. Previously, Scottish juries could convict on majority of 8 out of 15 jurors, however the change introduces a more demanding evidential threshold for the Crown, which in turn influences defence advocacy. Senior and junior counsel must reconsider how they structure cases to either meet or challenge this higher standard. This higher threshold aims to bolster safeguards for the accused while maintaining the efficiency of Scotland's unique 15 member jury system.

The reforms derive from several broader policy objectives including:

- **Clarity for juries and victims.** It was argued that jurors often misunderstood the meaning of *not proven*, which could lead to inconsistent or unintended outcomes. The government and advocacy groups asserted that a two-verdict system (*guilty* / *not guilty*) would enhance transparency. By raising the bar for conviction, it has sought to counterbalance concerns that abolishing *not proven* might otherwise increase conviction rates without adequate procedural safeguards.
- **Alignment with international norms.** Scotland was one of the few jurisdictions in the world to retain a third verdict. Revisiting this structure was seen as part of modernising and aligning practices with comparable legal systems.
- **Responding to systemic concerns in sexual offence cases.** The debate around *not proven* intensified due to its frequency in rape trials, where high acquittal rates had generated significant public and academic scrutiny - prompting government action as part of a wider trauma informed justice agenda. Following a review of sexual offence case management by the Lord Justice Clerk, a number of recommendations were made which focused on:

- expanding prerecorded evidence to reduce trauma,



- creating a specialist Sexual Offences Court with mandatory trauma informed training,
- embedding trauma informed practice across all justice agencies,
- strengthening judicial case management to cut delays,
- improving the complainer experience through better support and communication,
- reforming jury directions to address myths about trauma and victim behaviour, and;
- increasing specialism among judges, prosecutors, defence lawyers, and court staff to ensure more consistent, informed handling of these sensitive cases.

The recommendations are actively being implemented, with a cross-justice governance group overseeing delivery through a Vision for Justice 2023-2026 plan. Key elements—such as trauma informed practice, prerecorded evidence, and the creation of a specialist Sexual Offences Court—are now embedded in legislation, although the new court has no confirmed start date yet.

One key recommendation which was not taken forward was the Scottish Government proposal of a pilot of juryless rape trials, where cases would be tried by a single judge. This was intended to address low conviction rates and explore whether judge only trials could improve the experience of victims. However, the proposal raised strong concerns about fairness, evidence, and human rights and by late 2024, the Government scrapped the juryless trials plan due to lack of parliamentary support and widespread opposition from the legal sector.

Legal Aid Challenges

The Faculty of Advocates faces increasing pressures arising from ongoing reforms to Scotland's legal aid system. The Scottish Government's Legal Aid Reform Discussion Paper (2025) highlights that while Scotland maintains one of the most comprehensive legal aid systems in Europe, funding alone is no longer sufficient to guarantee effective service delivery. The system requires improvement to remain responsive and sustainable.

A major concern is the planned reform of legal aid fees, with research and restructuring scheduled for 2025–2026 under the Vision for Justice Plan. The uncertainty surrounding future fee levels poses a risk to the financial viability of legally aided practice, particularly in complex or solemn criminal cases for both solicitors and advocates. This comes alongside the Government's plan to simplify the model, which may alter how and when counsel are instructed, with the potential to reduce advocates' early involvement in cases and affecting workflow and income stability.

The Government also notes that service provision varies across Scotland depending on location, meaning funding does not always ensure availability. This raises risks of regional shortages in advocacy services, placing disproportionate pressure on certain areas of the Bar and creating challenges in meeting demand.

Regulatory Reform of Legal Services

The Regulation of Legal Services (Scotland) Act 2025 represents a long-debated restructuring of the regulatory framework governing legal professionals. The Act implements portions of the 2018 Robertson Review, and introduces new governance, oversight and consumer protection but formally abandons others, such as the proposal for a single national regulator. The key changes include:

- Strengthening the role of Faculty as a statutory (Tier 2) regulator, clarifying its status within Scotland's multiregulated model and reinforcing its responsibility for overseeing advocates' professional standards;



- Requiring 50% lay membership on regulatory committees, increasing transparency, accountability and public confidence;
- Mandating formal annual reporting obligations for regulators documenting regulatory activity (complaints, disciplinary action, compliance monitoring), performance against regulatory objectives, and how lay members have influenced decision making;
- Introducing new offences for impersonating a lawyer or regulated provider, bolstering consumer protection.
- Introduces Licensed Legal Services Providers (LLSPs) which change the landscape of legal services delivery creating new types of entities with which advocates may interact,

These reforms confirm the Faculty's continued status as a statutory regulator (Tier 2), while expanding the expectations placed upon it. The responsibilities will require internal review and process changes, more frequent policy updates, and strengthened reporting procedures.

Broader Justice Reform

Other key elements of reform by way of emerging legislative and parliamentary developments both in flight and upcoming will have a direct impact on members at Faculty. A few of these are noted below.

The Scottish Courts and Tribunals Service (SCTS) announced a three-year programme to modernise and reform court operations. With a focus on service, tackling backlogs and improving efficiency, it is moving towards a fully digital civil justice system, enabling end-to-end online case management and upgrading all case management systems within the Office of the Public Guardian to enhance professional and public access. As well as this and at its core, is preparation for and delivery of the Lord Justice Clerk recommendations noted above.

The Scottish Civil Justice Council also continues its multiyear Rules Rewrite Project, consulting on new Ordinary Procedure Rules and progressing numerous amendments to civil procedure across 2023–2024. The Council is also preparing for future responsibility over tribunal rulemaking.

The Scottish Government is also expanding mediation services increasing access to and encouraging greater use of mediation so that more civil disputes can be resolved without going through full litigation. This is intended to ease pressure on the courts, speed up case resolution, and offer a less adversarial and less stressful process for those involved.

Evolving Landscape

The Scottish legal market continues to evolve, with particular emphasis on the rising use of AI supported tools. Whilst it introduces ethical, regulatory and training challenges, it can be used to streamline research, document review, and case analysis through advanced tools. A degree of caution has been exercised by Faculty following suit of the Irish Bar and introducing member guidance and training to inform understanding.

Improved Focus on Pro Bono across Scotland

The Scottish Pro Bono Roundtable is a newly established national forum designed to strengthen, coordinate and support pro bono legal work across Scotland. Chaired jointly by the Faculty and the Law Society of Scotland, the Roundtable brings together key organisations delivering or supporting pro bono services, alongside government and academic partners, to share intelligence on unmet legal need, identify good practice, and promote collaboration across the sector. By providing structured oversight of demand, activity and emerging challenges,



the Roundtable helps ensure that pro bono assistance is targeted where it is most needed, while also supporting alignment with UK-wide pro bono initiatives and constructive engagement with the Scottish Government.

The Faculty plays a central leadership and convening role within the Roundtable, reflecting its long-standing commitment to access to justice and its responsibility as a guardian of the public interest. Pro bono work is of fundamental importance both to the Faculty and to Scotland as a whole: it complements, but does not replace, a properly funded legal aid system, and represents a voluntary professional commitment to supporting individuals and communities who might otherwise be unable to obtain legal help. The Roundtable recognises that no single organisation can meet these needs alone, and that effective pro bono delivery depends on cooperation between the Bar, solicitors, law firms, in-house teams, universities, advice agencies, charities and government. By working together through the Roundtable, these groups can maximise impact, avoid duplication, and collectively strengthen Scotland's pro bono landscape for the benefit of society at large.

Improving the Culture/Wellbeing

The Faculty began a comprehensive culture programme of review in 2022, prompted by a combination of internal reflection, member feedback, and external scrutiny. Concerns raised around governance, transparency and professional culture, alongside wider public discussion, made clear the importance of taking a proactive and credible approach to understanding what the culture should be at Faculty. An independent, externally led review was essential to ensure confidence in the process, to hear directly from across the profession, and to assess how the Faculty could better promote a culture that is inclusive, respectful and accountable. A central aim throughout has been to support the accessibility, diversity and sustainability of the Scottish Bar, ensuring it remains open and attractive to talent from the widest possible backgrounds

The review has delivered tangible and ongoing benefits. An independent culture and inclusion report, informed by extensive engagement with members and staff, has led to the establishment of a structured improvement plan. Key successes include strengthened governance arrangements, the appointment of independent trustees, improved transparency and reporting structures, and the systematic collection of equality, diversity and earnings data to better understand and address barriers to progression. These steps reflect a sustained commitment to widening access to the profession, improving diversity at all levels of practice, and embedding long-term cultural change within the Scottish Bar, while sharing learnings with colleagues in other jurisdictions