

Executive Summary

An independent legal profession, and an independent judiciary, is central to the rule of law. The protection of the public from the arbitrary abuse of power by the state depends upon it. Political regulation of the legal profession is not appropriate.

At present the legal profession is regulated by the Lord President. He is a regulator who is independent from government and parliament, and independent from those whom he regulates.

In this Bill the government proposes to:

- take into its own hands powers to control lawyers;
- remove aspects of the Court of Session's oversight of the legal profession; and
- impose itself as a co-regulator along with the Lord President.

These proposals are a threat to the independence of the legal profession and the judiciary. It is of critical constitutional importance that there is a legal profession which is willing and able to stand up for the citizen against the government of the day. The judiciary is fundamentally opposed to this attempt to bring the legal profession under political control. If the Bill is passed in its current form, Scotland will be viewed internationally as a country whose legal system is open to political abuse.

We have no difficulty with the Scottish Government's decision to create a framework of Category 1 and Category 2 regulators. The Bill ought to be amended so that it maintains, rather than threatens, the independence of the judiciary and the legal profession. If that is done, the Bill will form an acceptable foundation for updating the regulation of legal services in Scotland and provide for the protection of consumers and other users of legal services.

This response represents the unanimous view of all of the senior judiciary.

Response to questions posed by Equalities, Human Rights and Civil Justice Committee in their call for views on the Bill

1 a. What are your views on the principal recommendation of the Robertson Review that an independent regulator should be created to regulate legal professionals?

The Robertson Review proceeded on the fundamentally flawed premise that the legal profession in Scotland regulates itself. This is incorrect. The regulator of the legal profession is the Court of Session in the form of the Lord President. The Lord President is a regulator who is independent from government and parliament and independent from those whom he regulates. Limited self-regulation by the professional bodies is controlled by the Lord President, as the ultimate regulator.

The principal recommendation of the Robertson Review would have removed the power to regulate the legal profession from the judiciary and transferred it to a body responsible to parliament. This would have created an unwarranted and unacceptable interference by the government and parliament with the judiciary. The Review's failure to recognise the constitutional importance of the independence of the legal profession, its importance in helping secure the independence of the judiciary and thus the rule of law, was gravely concerning. Its lack of understanding surrounding the Lord President and the Court's role, and the fundamental democratic principles which underpin them, mean that the Robertson recommendation was never viable. The removal of regulatory power from the judiciary as was proposed by the Robertson Review is unacceptable to the judiciary.

1 b. What are your views on the Scottish Government's decision to "build on the existing framework" rather than follow that principal recommendation?

We welcome the Scottish Government's decision to build on the existing framework. We have no difficulty with the Scottish Government's decision to create a framework of Category 1 and Category 2 regulators. If the Bill is amended so that it would maintain, rather than threaten, the independence of the judiciary and the legal profession, the Bill should form an acceptable foundation for updating the regulation of legal services in Scotland and providing for the protection of consumers and other users of legal services.

The foundation of our democracy is the rule of law and the doctrine of the separation of powers. An independent legal profession, and an independent judiciary, are central to the operation of the rule of law; the protection of the public from the arbitrary abuse of power by the state depends upon it. It is for this purpose

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that the First Minister, the Scottish Ministers and the Scottish Parliament are under a statutory duty to uphold the continued independence of the judiciary.¹

The effect of this Bill is to transfer aspects of the regulation of the legal profession from the judiciary to the government. We have grave concerns about the current provisions of the Bill by which the Scottish Government would:

- take into its own hands powers to control lawyers;
- remove aspects of the Court of Session's oversight of the legal profession; and
- impose itself as a co-regulator along with the Lord President.

These provisions would serve only to harm the independence of the legal profession, and in turn impinge upon the independence of the judiciary. Political regulation is simply not appropriate under any circumstances.

The rule of law requires a court system in which all citizens have complete confidence that their cases will be adjudicated impartially and independently and that the lawyers who represent them are able to do so confidently and without fear of reprisal.

The dangers of transferring aspects of regulatory power over the legal profession from the judiciary to the government, as proposed in this Bill, cannot be overstated.

Recently, we have seen attacks on lawyers by politicians who have, on multiple occasions, publically criticised "lefty activist lawyers" for "hamstringing" the justice system by challenging the government in court.²

To give a recent example, on 25 July 2023 the Prime Minister said: "*The Labour Party, a subset of lawyers, criminal gangs - they're all on the same side, propping up a system of exploitation that profits from getting people to the UK illegally.*" In response the Bar Council for England and Wales said:

*"Lawyers are not beyond reproach, and all professions have individuals who commit misconduct and are dishonest. Regulators are there to discipline them. The comments by the Prime Minister, however, are clearly an attempt to play politics with the legal profession. This damaging rhetoric undermines the rule of law, trust in lawyers and confidence in the UK legal system and is to be deplored."*³

That illustrates why neither political nor government regulation is an appropriate model for regulation of the legal profession. It is of critical constitutional importance

¹ Judiciary and Courts (Scotland) Act 2008, section 1.

² CJ McKinney "5 times the Johnson government complained about 'lefty lawyers' (2022) Legal Cheek, available at <https://www.legalcheek.com/2022/06/5-times-the-johnson-government-complained-about-lefty-lawyers/>.

³ Bar Council "Bar Council reacts to PM's comments on immigration lawyers" The Bar Council, available at <https://www.barcouncil.org.uk/resource/bar-council-reacts-to-pm-s-comments-on-immigration-lawyers.html>.

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that there is an independent legal profession willing and able to stand up for the citizen against the government of the day. A human rights lawyer, for example, must be free to act against the government without fear of disciplinary action. So too must a criminal defence lawyer. Similarly, independent lawyers representing the government, or involved in prosecutions, must be free from government interference in the exercise of their professional responsibilities. This is what sets the legal profession apart from other professions.

It may be suggested that no Scottish Government would abuse the powers which this Bill would give it over the legal profession. However, it is important that the Scottish justice system is seen and respected both at home and internationally as a system which protects the independence of the judiciary, the legal profession and the rule of law, and is not seen as a system which is open to political abuse.

Recent events in Israel and Poland serve as a timely reminder of the need for constant vigilance in the protection of the judiciary against government interference. On 24 July 2023, despite strikes and street protests, the Israeli Parliament enacted a government Bill to limit the power of the judiciary.⁴ Government interference with the judiciary in Poland has led to Poland being fined €500,000 per day by the European Court of Justice.⁵ In its final judgment on 5 June 2023 the court stated:

*“...it is for the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The principle of the effective judicial protection of individuals’ rights under EU law, thus referred to in that provision, is a general principle of EU law stemming from the constitutional traditions common to the Member States”.*⁶

Although the UK is no longer a Member State, the principle that the citizen should have effective judicial protection is important in any democracy.⁷ For example, Article 13 of the European Convention on Human Rights states:

⁴ Paul Adams, Raffi Berg & Laurence Peter, “Israel judicial reform: Crowds confront police as key law passed” available at <https://www.bbc.co.uk/news/world-middle-east-66258416>.

⁵ Court of Justice of the European Union, Press Release No 89/23 Judgment of the Court in Case C-204/21 | Commission v Poland (Independence and private life of judges), available at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-06/cp230089en.pdf>.

⁶ Judgment of the Court in Case C-204/21 Commission v Poland (Independence and private life of judges) available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274364&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3814104>.

⁷ See for example the Bangalore Principles of Judicial Conduct, available at https://www.unodc.org/res/ji/import/international_standards/bangalore_principles/bangaloreprinciples.pdf and Articles 6 and 13 of the European Convention on Human Rights, available at https://www.echr.coe.int/documents/d/echr/convention_eng.

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“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The need to ensure that the citizen has effective judicial protection against the actions of governments means that the legal profession must be independent from the government. As Justice Michael Kirby AC⁸ said:

*“Independence is not provided for the benefit of protection of judges or lawyers as such. Nor is it intended to shield them from being held accountable in the performance of their professional duties and to the general law. Instead, its purpose is the protection of the people, affording them an independent legal profession as the bulwark of a free and democratic society”.*⁹

The judiciary has made its views on the importance of the independence of the judiciary and the legal profession known in its consultation response to the Robertson Review.¹⁰ It also made these views known in its response to the 2021 Government consultation on Legal Services Regulation Reform in Scotland in the executive summary. The judiciary stated:

*“To be clear, such an interference with role of the Lord President and the Court of Session in the manner proposed in this consultation is ... an interference with the rule of law. The judiciary will resist with all its strength this, and any other attempt by government or parliament to remove the Court’s regulatory powers.”*¹¹

Despite all of this, the current Bill, in its present form, fails to recognise the constitutional importance of the independence of the legal profession. It currently seeks to limit the power of the judiciary to regulate the legal profession by giving regulatory powers to the government.

In the policy memorandum the Scottish Government states that:

⁸ Former Australian High Court Judge and Chair of the UN Human Rights Council Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea.

⁹ The Hon. Justice Michael Kirby, (2005) *Independence of the Legal Profession: Global and Regional Challenges*, p2, available at www.icj.org/wp-content/uploads/2012/04/independence-legal-profession-occasional-paper-2005.pdf.

¹⁰ Full response of Senators of the College of Justice available at https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/regulatory-role-page/roberton-response-paper-final-27-5-19-doc-final.pdf?sfvrsn=a9f27de3_2.

¹¹ Full response of the Senators of the College of Justice available at https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/regulatory-role-page/legal-services-regulation-reform-in-scotland-consultation.pdf?sfvrsn=2247d1b3_2; Executive Summary available at https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/regulatory-role-page/executive-summary.pdf?sfvrsn=5b155b9c_2.

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“The Bill retains and builds upon the current oversight role of the Lord President in the legal services regulatory framework, prioritising the continued independence of the legal profession.”¹²

However, the Bill in its current form falls far short of that policy objective. Instead it limits the role of the Lord President, and endangers the continued independence of the legal profession, by bringing aspects of legal regulation under government, and therefore political, control. It threatens the separation of powers between the government, parliament and the judiciary. It constitutes an unacceptable interference by the government with the judiciary.

This is in marked contrast to previous government policy. The policy memorandum for the Legal Services (Scotland) Act 2010 stated:

“The involvement of Ministers in the regulation of individual lawyers, even at one remove, may also raise constitutional concerns about the independence of the profession.”¹³

These constitutional concerns make it essential that the previous government policy is restored and the current Bill is amended so that the government is not involved in such regulation.

1 c. What are your views on whether there is a risk that the proposals could raise concerns about a potential conflict of interests?

In the Bill as currently drafted, the Scottish Government proposes:

- to take into its own hands powers to control lawyers;
- to remove aspects of the Court of Session’s oversight of the legal profession; and
- to impose itself as a co-regulator along with the Lord President;

which would give rise to a grave conflict of interest.

The Scottish Ministers have been directly involved in 4,121 cases in the Scottish courts between 2018/19 and 2022/23. The process of judicial review exists to allow citizens (and governments) to challenge executive power, safe in the knowledge that an independent judiciary will hear the case without fear or favour. High profile

¹² Scottish Parliament, Regulation of Legal Services (Scotland) Bill, Policy Memorandum, para 105 available from the Bill page on the Scottish Parliament website: <https://www.parliament.scot/Bills-and-laws/Bills/regulation-of-legal-services-scotland-Bill/introduced>.

¹³ Scottish Parliament website archive, Legal Services (Scotland) Bill, Policy Memorandum, para 139 available at [https://archive2021.parliament.scot/S3_Bills/Legal%20Services%20\(Scotland\)%20Bill/b30s3-introd-pm.pdf](https://archive2021.parliament.scot/S3_Bills/Legal%20Services%20(Scotland)%20Bill/b30s3-introd-pm.pdf).

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litigations involving the Scottish Government are routinely heard in the Court of Session. For example:

- the prorogation of parliament case;
- the Rangers cases;
- the Scottish Government's reference to the Supreme Court in relation to the Scottish Independence Referendum Bill;
- the Scottish Government's challenge to the UK Government's use of Section 35 of the Scotland Act to stop the Gender Recognition Reform (Scotland) Bill going forward to Royal Assent;
- cases challenging government policy on, for example, Covid-19 restrictions;
- cases challenging Acts of the Scottish Parliament, for example the Tied Pubs (Scotland) Act 2021; and
- cases brought by members of the public challenging planning decisions.

Inevitably, these cases are particularly politically sensitive and independence from government is critical. It is essential that the lawyers acting for and against the government in such cases act independently; that they are not under the control of the government and that they do not fear being subject to regulatory sanction if they win or lose a politically controversial case. The same applies to lawyers defending accused persons (whether ordinary members of the public or prominent citizens) against criminal prosecutions brought by the state.

If the Bill is enacted in its current form there will be a clear conflict of interest for the Scottish Government; the Scottish Ministers will have the power to control the activities of lawyers acting for and against them.

2. What are your views on the current regulatory landscape for legal services in terms of complexity or simplicity?

The current regulatory landscape is that the Lord President is the ultimate regulator of the legal profession. Limited self-regulation by the professional bodies is controlled by the Lord President, as the ultimate regulator.

The Lord President's role as regulator is set out on the ["Regulating the Legal Professions" page](#) of the Judiciary of Scotland website. A table of the Lord President's regulatory powers is available on that page. The table is not exhaustive. The Lord President and the Court of Session perform roles which have been developed by case law. For example, the Court of Session regulates the conduct of proceedings before it, the Sheriff Appeal Court and the Sheriff Courts. The court acts

as an arbiter of professional standards and judges regularly make observations about the standard and conduct of lawyers in their judgments.¹⁴

The Bill would complicate the current landscape by introducing a second regulator in the form of the Scottish Ministers, rather than the Lord President remaining the sole regulator. For example, sections 19 and 20 and schedule 2 would give certain regulatory powers to the Scottish Ministers (see below). Certain of the regulatory powers require the agreement of the Lord President (e.g. section 20(5)). Further complications would arise because of the possibility of disagreement between the Lord President, acting as independent regulator, and the Scottish Ministers acting as a regulator lacking independence due to their conflict of interest.

A particularly dangerous regulatory power, which the Scottish Government seeks to give itself and which would complicate the current landscape, is the power to authorise and regulate legal businesses directly (section 49). Direct government control of lawyers is unacceptable for the reasons set out by the government under its previous policy on the 2010 Act referred to above. The requirement in section 49 for the agreement of the Lord President would not be an adequate safeguard. If it is necessary for a regulator to authorise and regulate a legal business directly, it is essential that such a process be wholly within the control of the Lord President as the independent regulator of the legal profession, and not in any way under political control.

3. What are your views on the proposed division of regulators into two categories and the requirements which these regulators will have to comply with, as set out in Part 1 of the Bill?

We have no difficulty with the proposed division into two categories.

However, it is essential that the requirements, with which category 1 and category 2 regulators have to comply, are set out in legislation and set by the Lord President rather than being set, or altered, by the Scottish Ministers. In its current form the Bill would give extensive powers to the Scottish Ministers to amend the regulatory objectives and professional principles (section 5(1)). The Bill currently provides for this to be done without the consent of the Lord President, who is downgraded from regulator to one of many consultees (section 5(2)). This constitutes a gross interference with the powers of the judiciary and the rule of law. At present, the Bill would give the Scottish Government power, for example, to remove the requirement for lawyers to act with independence in the interests of justice (section 4(1)(b)), and

¹⁴ For example, see *Nyiam* 2021 HCJAC 44, *Macdonald* 2020 HCJAC 21, *Lundy* 2018 HCJAC 03, *Donegan* 2019 HCJAC 10.

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remove the requirement that lawyers act with integrity (section 4(1)(c)). The potential for such political interference is unacceptable.

A particular concern arises with the regulation of advocates. Advocates are regulated by the Court of Session, which has delegated some of its functions to the Faculty of Advocates. This is set out in section 10 of the Legal Services (Scotland) Act 2010, and is reflected in section 8(3) of the Bill, which currently assigns “the Faculty of Advocates (acting on behalf of the Court of Session)” as a Category 2 regulator. However, this is not reflected in section 8(5) which would allow the Scottish Ministers to reassign the Faculty as a Category 1 regulator, without the consent of the Lord President or the Court of Session. The Faculty has no independent right to regulate, and does so only by exercising those powers of the Court of Session which have been delegated to it. By taking direct control of the re-assignment of the Faculty of Advocates, the Scottish Government would be interfering with the delegation by the Court of Session, and usurping the powers of the Court of Session.

4. Section 19 of the Bill gives Ministers the power to review the performance of regulators’ regulatory functions. Section 20 sets out measures open to the Scottish Ministers. What are your views on these sections?

Sections 19 and 20 of the Bill as currently drafted are an unacceptable interference with the role of the judiciary to regulate the legal profession.

Sections 19 and 20 represent an important and valuable addition to the powers of the regulator of legal services. The problem is that these additional powers would not be given to the existing regulator, the Lord President. Instead they would be given to the Scottish Government. For the reasons set out above, these powers should not be placed under political control. Unlike sections 37 and 38 of the Legal Services (Scotland) Act 2010, sections 19 and 20 would apply to the whole legal profession as opposed merely to alternative business structures.

In order to protect the independence of the legal profession from Scottish Government interference, the powers in section 19 and 20 should be added to the powers of the existing independent regulator, the Lord President. The Scottish Government’s legitimate interest in the legal profession could be recognised by adding the Scottish Ministers to the list of people who may request a review (section 19(1)). A review by the Lord President could be requested by the Scottish Parliament, the CMA, Consumer Scotland, or the Scottish Ministers. If that is done, suitable arrangements would require to be made to ensure that the Lord President receives adequate funding to exercise these additional and important functions.

In addition to that general point, there are two particular objections to the detail of the mechanism, currently set out in sections 19 and 20 of the Bill.

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First, the Bill seeks to impose the Scottish Ministers as a co-regulator of the legal profession along with the Lord President. If the Bill were to remain in this form, it would minimise the role of the Lord President. The review process would be driven entirely by the Scottish Ministers. The Scottish Ministers would decide whether there is to be a review and would conduct it, all without any input from the Lord President (section 19). The Scottish Ministers could impose a financial penalty upon a regulator without the agreement of the Lord President (section 20(4)(d) and (5)). The Lord President's agreement would be required for other sanctions (section 20(4)(a), (b), (c) or (e) and (5)), but he is not involved in the review itself. His role would be minimised either to agreeing (or not agreeing) with the sanctions proposed by the Scottish Ministers. An exercise by the Lord President of his right to veto the sanctions could lead to public conflict between the Scottish Government and the judiciary. That is another reason why the review should not be under political control.

Secondly, in its current form the Bill would give the Scottish Ministers power to delegate the review to any person or body whom they consider appropriate (section 19(6)). Important constitutional matters such as regulation of the legal profession should not be delegated in this way. The proposed unfettered discretion of the Scottish Ministers to delegate to anyone the ability to review the performance of a category 1 or category 2 regulator is inappropriate. The appropriate person to undertake a review and to impose sanctions on category 1 and 2 regulators is the Lord President, as ultimate regulator of the legal profession.

5. What is your understanding of the experiences of other jurisdictions, for example England and Wales, where independent regulators have been introduced to regulate legal services?

Both before and since the Union with England in 1707, the regulation of the legal profession in Scotland has been different and distinctive from the regulation of the legal profession in England and Wales.

In England, the legal professions were self-regulating. Therefore, the Legal Services Act 2007 introduced independent regulators to regulate legal services.

However, in Scotland there is (and has been for many centuries) an independent regulator in the form of the Lord President and the Court of Session.

The regulation of the legal profession must not be transferred from the current independent regulator in Scotland to the Scottish Government. Issues such as competition, protection of consumers and modernisation of legal practice can all be addressed while the Lord President retains his position as independent regulator, and the regulatory regime safeguards the rule of law.

6. What are the main deficiencies in the current complaints system and do you believe the proposals in the Bill are sufficient to address these issues?

At present, the Court of Session, as part of its function as regulator of the legal profession, oversees the complaints system by considering appeals against decisions made by the Scottish Legal Complaints Commission.¹⁵ Deficiencies in the operation of the current complaints system, which have been caused by the Scottish Legal Complaints Commission acting unlawfully, have been corrected in appeals to the Court of Session.¹⁶

The Bill seeks to put the Scottish Legal Complaints Commission (which the Bill proposes to rename the Scottish Legal Services Commission) above the law by abolishing the appeal from it to the Court of Session. Instead the decision of the SLSC's review committee would be final.¹⁷

The proposal in the Bill to abolish the appeal to the Court would constitute the removal of a regulatory function from the Court of Session. The judiciary objects to this proposed interference with its regulatory functions. Because of the constitutional role of the Court of Session in regulating the legal profession, it is unacceptable for the Scottish Government to propose ousting the court's appellate jurisdiction to prevent the SLSC from acting unlawfully.

Abolishing the direct right of appeal to the Inner House of the Court of Session is likely to lead to increased delays and expense in the complaint process. At present, if the SLCC acts unlawfully, there is only one step between the SLCC decision and the Inner House of the Court of Session. Under the Bill as currently drafted, this would be increased to three steps: review by the review committee, judicial review of the review committee in the Outer House of the Court of Session, and then appeal against the Outer House decision to the Inner House of the Court of Session.

The Financial Services Ombudsman and the Scottish Public Services Ombudsman are not suitable models for an appeal process in relation to complaints against

¹⁵ This is explained in the Regulation of Legal Professions section of the Judiciary of Scotland website, available at <https://www.judiciary.scot/home/judiciary/regulating-legal-professions>; and paras 39-41 of the Response from the Senators of the College of Justice to the Robertson Review, available at https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/regulatory-role-page/robertson-response-paper-final-27-5-19-doc-final.pdf?sfvrsn=a9f27de3_2m.

¹⁶ For example, see *Kerr Stirling v SLCC* [2012] CSIH 98; *Bartos v SLCC* [2015] CSIH 50; *McSparran Cormick v SLCC* [2016] CSIH 7; *Anderson Strathern v SLCC* [2016] CSIH 71; *Benson v SLCC* [2019] CSIH 33; *McGregor v SLCC* [2019] CSIH 58; *Beltrami v SLCC* [2022] CSIH 22; *SLCC v Murray* [2022] CSIH 54; *Aberdeen Computer Services v SLCC* [2023] CSIH 5; *De La Torre v SLCC* [2023] CSIH 12.

¹⁷ Section 58(3) of the Bill (which proposes to insert new section 20A (8) to the Legal Aid and Legal Profession (Scotland) Act 2007 Act providing that the decision of the committee is final), and section 58(4) (which proposes to abolish the right of appeal to the court).

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lawyers.¹⁸ The constitutional issues which arise in the regulation of the legal profession do not arise in relation to financial services and public services. Further, the Court does not exercise a regulatory function over financial and public services.

7 a. What do you consider the impact of the Bill's proposed rules on alternative business structures might be generally?

We have no comments on this.

7 b. What do you consider the impact of the Bill's proposed rules on alternative business structures might be in relation to consumers of legal services?

We have no comments on this.

8 a. What are your views on the provision of "Entity regulation" (as set out in Part 2 of the Bill)?

We have no comments on this.

8 b. What are your views on the provision of title regulation for the term "lawyer" (section 82)?

We have no comments on this.

9. Do you have any further comments on the Bill and any positive or negative impacts of it?

Our response to this call for views sets out our main concerns about the Bill. There may be additional matters of detail which require to be raised in due course.

Our concerns with the Bill as it is currently drafted can be summarised under three headings.

First, the Scottish Government proposes taking into its own hands the power to control lawyers. It would be giving itself the power to:

- change the professional obligations of lawyers, for example by removing the requirements that lawyers act with independence, keep client's affairs confidential, and act in conformity with professional ethics (section 5(1)(b));
- rewrite the Act after it is passed by Parliament (section 90);
- re-assign the Faculty of Advocates, the Law Society of Scotland and the Association of Commercial Attorneys to a different category of regulator (section 8(5));
- review the performance of a regulator (section 19);

¹⁸ Scottish Parliament, Regulation of Legal Services (Scotland) Bill, Policy Memorandum, para 259 available from the Bill page on the Scottish Parliament website: <https://www.parliament.scot/Bills-and-laws/Bills/regulation-of-legal-services-scotland-Bill/introduced>.

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- publicly censure regulators (section 20(4)(c));
- impose financial penalties on regulators (section 20(4)(d));
- impose unknown regulatory requirements on new regulators of legal services (section 26(1)(d)); and
- directly authorise and regulate legal businesses (with the agreement of the Lord President) (section 49).

Secondly, the Scottish Government would be able to interfere with the judiciary's oversight of the legal profession by:

- introducing a requirement that category 1 regulators report not to the Lord President, but to the Scottish Parliament (section 13); and
- removing the right to appeal to the Court of Session from a decision of the Scottish Legal Services Commission (section 58(4)).

Thirdly, rather than leaving the Lord President as the sole and independent regulator, the Scottish Ministers seeks to impose themselves as a co-regulator. The agreement of the Scottish Government, as well as the Lord President, would be required to:

- approve a new regulator of legal services (section 29);
- set performance targets for, give directions to, impose financial penalties on, and change the functions of, regulators (section 20);
- approve a category 1 regulator's authorising and regulating legal businesses rules (section 41(4)(b));
- take action as a last resort to ensure that the provision of legal services by legal businesses is regulated effectively (section 49).

If the Bill is amended to meet these concerns, it should form an acceptable foundation for updating the regulation of legal services in Scotland and providing for the protection of consumers and other users of legal services. As noted earlier, this is subject to ensuring that the Lord President receives adequate funding to exercise these additional and important functions.