

# Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux



1939-2009: 70 years  
of Scottish CAB advice

## Legal Services (Scotland) Bill

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Citizens Advice Scotland and its 83 CAB offices form Scotland's largest independent advice network. CAB advice services are delivered through 222 service points throughout Scotland, from the islands to city centres.

The CAB service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB service is independent and provides free, confidential and impartial advice to everybody regardless of race, sex, disability or sexuality.

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# Legal Services (Scotland) Bill 2010

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## 1. Summary of key points

We support:-

- The establishment of a regulatory framework for LLSP

We have concerns regarding:-

- The number of approved regulators and the potential for inconsistency of approach and license fee tariffs. We believe there is a need for more prescriptive requirements.
- The failure to impose any time limits regarding regulator authorisation.
- The lack of an advisory panel to advise Ministers on applications for authorisation and to review the new regulatory framework.
- The focus on the commercial sector, with the requirement that LLSPs must charge fees for their services. This requirement precludes the charitable advice sector. We would call for this part of the Bill to be amended, and for a specific set of governance requirements for charitable organisations be developed.
- The discrepancy between the regulatory requirements for existing legal service providers and those to be applied to the new LLSPs. We consider that the Council of the Law Society of Scotland should consist of 50% non solicitor representation to mirror that of the new regulatory committee

## 2. Introduction

Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland's network of 83 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services throughout nearly 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

Last year, the Scottish CAB service dealt with just under a million different client issues – almost one hundred and twenty issues every hour. These issues cover a wide range of topics including welfare benefits, housing, debt, consumer and employment. The Scottish CAB service continues to experience a significant demand for services requiring varying degrees of legal advice and guidance, and in certain circumstances representation in Employment and United Appeal Tribunals.

In 2008/09 the Scottish CAB service provided advice on **21,232** legal issues and out of those completed court or tribunal documentation for **8,845** clients. Bureaux advisers undertook casework for 3,189 cases, representing **2,113** clients at Employment and United Appeal Tribunals and achieved a financial gain for those individuals of nearly **£10.2m**.

The CAB service in Scotland acknowledges that there is a need to create greater competition in the market for legal services in Scotland. It is our view that new ways of delivering those services are required that should result in greater consumer choice and increased accessibility to high quality legal services. We therefore generally support the liberalisation of the legal services market in

Scotland, and see it as an opportunity to improve access to justice and to make greater provision of legal services to disadvantaged client groups. However, it is our view that the Bill has been drafted focusing toward commercial enterprise and has not fully considered not-for-profit or charitable organisations who may wish to utilise new business structures.

The Scottish CAB service is broadly supportive of the provisions contained in the Bill, although we have some concerns which will be outlined in the body of this response.

### **3. Approved regulators (Part 2, Chapter 1)**

We support the Bill's commitment to ensure that consumers who chose to use alternative legal service providers receive the same level of consumer protection as those using traditional forms of legal practice. We also support the requirement that licensed legal services providers (LLSPs) have to have sufficient professional indemnity cover in place and that should the occasion arise, consumers using LLSPs will have access to a Guarantee Fund or equivalent to ensure they have the same level of protection as provided to consumers using traditional legal service providers.

While the Scottish CAB service is supportive in the requirement for regulation, we do have concerns surrounding elements of the proposed structure of regulation. Under the terms of the Bill, any organisations fulfilling the eligibility criteria will be able to apply to be a regulator. Although this will enable organisations other than current professional bodies to apply, there is a real danger that if the regulatory function is undertaken by too many bodies, there will be a lack of consistency in terms of approach, regulatory framework and license fee tariffs which may act as a deterrent to some organisations considering LLSP status. We believe that the Bill should be more prescriptive in terms of stating a maximum number of Regulators, and that all organisations fulfilling this role should adopt a standard regulatory framework and fee structure as determined by Ministers in consultation with legal profession representatives and consumer protection agencies.

The Bill aims to allow authorisation to act as a regulator to be awarded without any time limit. The Scottish CAB service is of the view that an open-ended arrangement should be removed leaving a time limited period as the only option. It is important that a regular and robust procedure to review the authorisation of a regulator is in place to ensure that the regulator and their regulatory scheme adheres to and applies the regulatory objectives and obligations.

It is a concern that the Bill does not contain provision for establishment of an advisory panel made up of non-legal, consumer and voluntary advice sector representatives to advise Ministers on applications for authorisation and to keep the regulatory framework under review. An independent advisory panel could safeguard against any of the new regulatory bodies having a conflict of interest if it has responsibility for regulating a LLSP, regulating legal professionals while trying to promote the interests of the public. Such a panel could also play an important role in monitoring the regulatory body's performance against the regulatory objectives.

#### **4. Licensed Legal Services Providers (Part 2, Chapter 2)**

The Scottish CAB service is of the view that the eligibility criteria designated to qualify as a LLSP has been drafted purely with the commercial sector in mind and has not considered that voluntary advice organisations may benefit from adopting the alternative business structure model. In a significant number of locations throughout the country the ability to engage a legal professional would greatly broaden and deepen the range and complexity of legal advice services a citizens advice bureaux (CAB) could offer to its clients. It is disappointing to note that the current provisions in the Bill would preclude organisations such as CAB from registering as LLSPs as bureaux offer FREE advice to clients, whereas the Bill states that LLSPs must charge fees for their services. The effect of this is that bureaux will remain unable to employ solicitors directly, as is currently the case. We would like to see the criteria for LLSP status contained within the Bill to be modified to enable bureaux to be able to directly employ solicitors for advice giving purposes.

It is recognised that this could have a potential downside particularly in respect of the regulative burden that would be placed on any bureau that may wish to become a LLSP. However, the Scottish CAB service is of the view that bureaux should be eligible to apply for LLSP status, and should have the choice whether to do so or not depending upon their ability to satisfy requirements. The removal of the requirement that LLSPs must charge fees will improve access to justice for consumers by increasing the types of services offered by free advice giving agencies.

The Bill states that LLSPs must have a Head of Service and Head of Practice/ Practice Committee as part of its governance structure to ensure that the new business models adhere to the principles of the legal profession, and additionally states that these roles can be performed by one and the same individual. There is a lack of clarity in these requirements in cases of LLSP's that may contain only one legal professional, as to whether these roles can be performed by the practising legal professional. The Scottish CAB service would be supportive of this interpretation for LLSP operating models involving charitable advice agencies, where funding constraints may mean that the engagement of more than one legal professional would not be possible.

#### **5. Applying the Regulatory Objectives (Part 4, Chapter 1)**

We are concerned that the Bill is not looking to apply the requirements of the new regulatory framework onto existing legal service business models. The resultant effect of this is that existing legal service providers will not have similar statutory duties as those imposed on LLSPs with regard to the regulatory objectives. We think that consumers obtaining legal services from traditional models may feel that they will not have the same level of protection as those using LLSPs.

In addition to consumer protection we feel that the regulatory duties being placed on LLSPs, in terms of Head of Service and Head of Practice, are over and above those applied to traditional forms of practice may deter the emergence of some potential LLSPs, particularly within the charitable sector where such additional governance requirements may be seen as onerous and financially unachievable. Although we agree that the Bill needs to create flexibility to encourage new

innovative legal service delivery models while ensuring high levels of consumer protection, we feel that greater latitude or discretion needs to be granted to regulators in terms of governance structure when granting LLSP licences to charitable advice agencies such as citizens advice bureau.

#### **6. Solicitors and Other Practitioners (Part 4, Chapter 3)**

The Scottish CAB service accepts the continuation of self-regulation by the Law Society of Scotland for solicitors who continue to operate under traditional forms of practice provided that there is an adequate and appropriate level of non-lawyer representation on the Society's Council. While the Bill proposes changes to the governance of the Society, in that Ministers can within the regulations, prescribe a number of non-solicitor members, the current proposal of twenty per cent non-lawyer membership does not feel sufficient. We suggest that the Society's Council should comprise of 50 per cent non-solicitor membership similar to that proposed for the Society's regulatory committee. Given that the Society's statutory representative function is in promoting the interests of the public, we feel that our suggested composition of the Council and regulatory committee should lead to increased public confidence and increased perception of transparency.

#### **7. Other Bodies (Part4, Chapter 4)**

The Scottish CAB service supports the proposal within the Bill concerning provisions giving the Scottish Legal Aid Board the general function of monitoring the availability and accessibility of legal services in Scotland. We see this as an important requirement to enable an early identification of unmet legal need or access to justice resulting through either an increase in consumer demand, or a restriction of legal services supply in the event that commercial LLSPs modify their operating models to concentrate on only the most profitable areas of legal services.

#### **8. Conclusion**

The Scottish CAB service broadly supports the Legal Services (Scotland) Bill and its goal of facilitating the development of new business models to create greater access, choice and value for money to the consumer for the provision of legal services from the commercial market. However our major concern is that the Bill has failed to adequately consider voluntary sector organisations, who can gain significant benefit to clients from disadvantaged groups, by participating in an alternative business structure with access to a qualified legal professional. We have outlined our responses to the provisions in the Bill and believe that all our concerns can be addressed in the near future through the Bill or the Statutory Instruments supporting the legislation.

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