



Law Society  
of Scotland

# Consultation Response

The Recognition of Professional Qualifications and  
Regulation of Professions: Call for Evidence

October 2020



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. As a statutory professional membership body pursuing legal excellence, we support the needs and requirements of the Scottish solicitor profession in delivering legal services to Scottish, UK and global businesses and consumers.

With the overarching objective of delivering and leading legal excellence, we strive to excel to be a world-class professional body, understanding and serving the needs of our members and the public. We work to assure that the public can be confident in Scotland's solicitor profession by setting and upholding standards to ensure the provision of excellent legal and customer services delivered by our members. We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession.

By virtue of the Solicitor (Scotland) 1980 Act<sup>1</sup>, the Society both regulates and represents the solicitor profession in Scotland. This is a dual role we have addressed successfully for over seventy years and is one which is supported by our membership.<sup>2</sup> We believe this dual role is essential in ensuring that Scottish solicitors deliver the highest of practical and ethical standards and is central to becoming and remaining a world class professional body.

Maintaining regulation, representation and professional support within one organisation ensures that we can be an effective professional body for Scotland's solicitors. To ensure we maintain practical distinction of our regulatory and representative roles, and at the same time operate as a unified professional body, the membership of the Society's Council, Regulatory Committee and sub-committees are comprised of both solicitors and members of the public, as too are a number of our non-regulatory committees in keeping with other world-class professional bodies.

As the professional body for Scottish solicitors we welcome the opportunity to respond to the UK Government's call for evidence: The Recognition of Professional Qualifications and Regulation of Professions. We have the following comments to put forward for consideration.

<sup>1</sup> Section 1 Solicitors (Scotland) Act 1980

<sup>2</sup> [http://www.lawscot.org.uk/media/466116/Members-Survey\\_2014.pdf](http://www.lawscot.org.uk/media/466116/Members-Survey_2014.pdf)

## General Comments

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In our response to the White Paper on the United Kingdom (UK) Internal Market (CP 278)<sup>3</sup> we noted that the UK Government planned to review the objectives for regulating professions and recognising international qualifications (Paragraph 97).<sup>4</sup>

The White Paper confirmed that the “*findings from this review will be implemented alongside the approach to professional qualifications in the UK Internal Market*”.<sup>5</sup> The United Kingdom Internal Market Bill already contains significant provisions in connection with the approach to professional qualifications within the UK internal market.

In particular, there are provisions in the bill which acknowledge the role of the legal professions in each of the jurisdictions within the UK. This should be seen in the context of the exclusion of the legal systems from the scope of the UK internal market set out in the White Paper. This exclusion builds upon a recognition that there have always been exclusions from the internal market since 1707 in terms of article XIX of the Union with England Act 1707 and the corresponding provision in the Union with Scotland Act 1706. The position of the legal profession in Scotland was also recognised in the Scotland Act 1998 Schedule 5, section C3<sup>6</sup> where the regulation of particular practices in the legal profession for the provision of legal services was expressly devolved by being excluded from the reservation of competition law.

The UK Internal Market Bill makes provision for UK Market Access to services in Part 3, clauses 15-21. These clauses ensure a service provider authorised in one part of the UK, will be able to provide services in the other parts unless they provide services (such as legal services) which are excluded under clause 16 and schedule 2 from the scope of the Mutual Recognition Principle in clause 17.

Professional qualifications and regulation (recognition) are covered by clauses 22-27 and Schedule 2. These clauses apply the principle of equal treatment of UK residents practising a profession in another part of the UK meaning that any professional qualification in one part of the UK is automatically recognised in the rest of the UK. Exceptions to these provisions include any law which limits the ability to practice the legal profession,

<sup>3</sup> Law Society of Scotland – Response to White Paper see: <https://www.lawscot.org.uk/media/369264/13082020-uk-internal-market-white-paper.pdf>

<sup>4</sup> UK Internal Market; White Paper CP278

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901225/uk-internal-market-white-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901225/uk-internal-market-white-paper.pdf)

<sup>5</sup> CP278, Page 39 Para 97

<sup>6</sup> Scotland Act 1998 : <https://www.legislation.gov.uk/ukpga/1998/46/contents>

meaning in Scotland the provision of advocate, solicitor, notary, conveyancing practitioner or executry practitioner (clause 25).

We have however an interest in how professions are generally regulated within the UK and in particular how the UK recognises professional qualifications from other countries. Our comments in this paper deal with these issues.

## Specific Comments

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### **4. Please outline the rationale for regulation within your sector.**

One of the central focuses of our role as a professional body and regulator of the Scottish solicitor profession, and the rationale for regulation of the legal sector, is to uphold and protect the interests of consumers through a robust and proportionate regulatory regime. The regulation of the legal sector promotes consumer confidence and is an essential component which contributes to the proper functioning of the justice system, the economy and society in general. Through regulation, consumers can instruct solicitors in the knowledge those solicitors:

- have high standards of legal education and training,
- have expertise and knowledge in the relevant practice area,
- maintain statutory indemnity and compensation fund arrangements,
- are subject to a complaint and redress process,
- are subject to robust practice rules and
- are, in the unlikely event something goes wrong, subject to stringent disciplinary regime.

Our regulatory role is one we are committed to ensuring that we diligently fulfil in accordance with our regulatory objectives as set out within the Legal Services (Scotland) Act 2010:

‘...the regulatory objectives are the objectives of—

(a) supporting—

- (i) the constitutional principle of the rule of law,
- (ii) the interests of justice,

(b) protecting and promoting—

- (i) the interests of consumers,
- (ii) the public interest generally,

(c) promoting—

- (i) access to justice,
- (ii) competition in the provision of legal services,

- (d) promoting an independent, strong, varied and effective legal profession,
- (e) encouraging equal opportunities (as defined in Section L2 of Part II of Schedule 5 to the Scotland Act 1998) within the legal profession,
- (f) promoting and maintaining adherence to the professional principles<sup>7</sup>

The objectives are underpinned by a regulatory framework which is set out primarily within the Solicitor (Scotland) Act 1980.<sup>8</sup> The 1980 Act provides the powers under which we regulate and support the Scottish solicitor profession.

**5. Please outline any evidence you have on the consumer protection impacts provided by your regulations.**

We do not have any direct evidence. However, we believe that Scottish solicitors' clients are arguably amongst the most protected when it comes to legal services.

- Only those who undertake extensive education, training and continued professional development are allowed to practise as a solicitor.
- Solicitor firms can only operate if they have adequate professional indemnity insurance to cover negligence for when mistakes are made.<sup>9</sup>
- Firms are proactively inspected to ensure all client money held is properly accounted for and to ensure firms play their part in supporting the UK's effort to tackle money laundering.
- Clients have recourse to the Client Protection Fund<sup>10</sup> (financed by the profession, not the taxpayer) if they are the victim of a solicitor's dishonesty.
- There is a clearly defined route to lodge complaints against a solicitor through the Scottish Legal Complaints Commission (SLCC). This is funded exclusively by the legal profession without any financial burden on the taxpayer. If eligible, these complaints are always investigated fully, fairly and independently of the solicitor or firm and with appropriate compensation available.

Independent research polls of the Scottish public has demonstrated that 90% of those surveyed are satisfied with the services provided by their solicitor and 82% would recommend their solicitor to others.<sup>11</sup> These results demonstrate high levels of trust in the legal profession and therefore would indicate that the current regulatory framework, although in many respects outdated – as touched upon further below (see Q21) - continues to achieve its main purpose of protecting and promoting consumer interests.

<sup>7</sup> Legal Services (Scotland) Act 2010, section 1 Regulatory Objectives: <https://www.legislation.gov.uk/asp/2010/16/contents>

<sup>8</sup> Solicitor (Scotland) Act 1980: <https://www.legislation.gov.uk/ukpga/1980/46>

<sup>9</sup> For further information see: <https://www.lawscot.org.uk/members/business-support/startingapractice/insurance-and-client-protection/>

<sup>10</sup> For further information see: <https://www.lawscot.org.uk/for-the-public/client-protection/client-protection-fund/>

<sup>11</sup> Ipsos Mori 2014 telephone poll of 1001 adults living in Scotland

### International Recognition

**6. Please outline your process(es) of recognising someone with an international qualification. In your answer, please include details of how this differs from the process of recognising a domestic applicant, the rationale for this/ the reasons why this is the case, and the costs of administering this route.**

In the vast majority of cases, domestic applicants will have qualified via the most common domestic route,<sup>12</sup> namely either by studying for a full or accelerated undergraduate degree at an accredited Scottish university, obtaining a post-graduate diploma again from an accredited Scottish university, and by undergoing a two-year traineeship within a firm or organisation. However, it is possible that a domestic applicant will have an international qualification in which case s/he will not be treated differently to a candidate of any other nationality with an international qualification. Likewise, an international candidate who has taken the standard Scottish route to qualification will be treated like all other domestic candidates insofar as the visa situation allows. At present, the UK Visas & Immigration requirements effectively exclude non-EU nationals becoming a trainee solicitor because the required remuneration is set at such a high level that most Scottish firms are unable to pay a trainee at that rate. It is true that an international candidate who had been through LLB, DPLP would not be treated any differently by ourselves but the nature of trainee remuneration in Scotland means all bar a small percentage of firms are unable to pay the required rate of Visas & Immigration requirements.

As of 1 November 2019, all solicitors re-qualifying from another jurisdiction can apply to undertake the Qualified Lawyers Assessment (QLA) This is a universal set of exams, which will attract various exemptions for solicitors already qualified in certain countries. As well as undertaking our exams, there are several essential pieces of paperwork prospective applicants must complete, namely:

- completed application form,
- certificate of Good Standing from home bar association,<sup>13</sup>
- Disclosure Scotland application, including copies of relevant documents,
- non-refundable administration fee of £500 plus a £25 charge for a Disclosure check and
- completed Learning Portfolio application form, where candidates are required to outline their academic and professional qualifications and experience and also apply for any exemptions which have not been automatically granted.

There are 11 subjects that applicants may be required to pass, however solicitors from some jurisdictions have been granted exemptions by right. It would also be open to applicants to apply for exemptions from any

<sup>12</sup> A less commonly used route is the “pre-PEAT” training contract (in lieu of an undergraduate university degree) in conjunction with Law Society exams.

<sup>13</sup> For further information see Schedule to the Admission as Solicitor (Scotland) Regulations 2019

<https://www.lawscot.org.uk/media/368407/admission-as-solicitor-scotland-regulations-2019-amendment-3-feb-2020-clean.pdf>

of these examinations on the basis of past study and qualifications. The Society's examinations are held in Edinburgh (although they are currently being held online due to the COVID-19 pandemic) and there are two diets each year, in May and November.<sup>14</sup>

The rationale for the QLA is essentially that if a person has undergone a process for qualification in another country, it seems an unnecessary duplication to require them to complete parts of our route to qualification. However, the exams are a necessary part of ensuring their competence to practise law in Scotland. As the QLA has been quite recently introduced, the question of proportionality was a major consideration in its design.

**6a. If you have different processes for different international routes (e.g. for candidates from the EU, USA, Australia, or due to any Mutual Recognition Agreements you hold), please include details on the differences between them.**

We offer exemptions to candidates from certain jurisdictions as follows:

- English and Welsh solicitors and barristers, Northern Irish solicitors and barristers and solicitors and advocates from the Channel Islands and the Isle of Man are exempt from sitting examinations in public law, obligations (contract law), European law and institutions, and professional conduct.
- Lawyers qualified in European Economic Area jurisdictions or Switzerland are exempt from sitting an examination in European law and institutions.
- Lawyers qualified in other common law jurisdictions are exempt from sitting part of the examination in legal system and legal method.

However, candidates who do not fall within these categories can still apply for exemptions on a case-by-case basis.

**7. Please outline any additional steps and their resource implications that you face in processing applicants with international qualifications?**

Apart from individual queries that may arise from time to time, the process is as detailed above. An issue may arise when an applicant is unable to provide a Certificate of Good Standing from their home bar. In this case, the applicant must request permission from our Admissions Sub-committee to proceed with their application without the certificate. Usually, the applicant will have to explain why they cannot provide it and what the route to qualification entails in their home jurisdiction.

<sup>14</sup> for further information see: <https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/requalifying-into-scotland/>



**8. With reference to any of the additional steps outlined above, what would you suggest are the priorities for the UK Government in considering future ways to recognise international qualifications? Please include any details on what an ideal system could look like, as well as how it could operate. Please consider what the priorities would be for the profession you regulate.**

See general comments above, at page 3.

**9. Do you require legislation to give you powers to make changes to your international recognition routes?**

We can make amendments via our own regulations, the power for which is delegated to us by the Solicitors (Scotland) Act 1980. There is a rigorous process for amendments and any new regulations. These are subject to approval by the Lord President of the Court of Session who maintains oversight of the regulation of the Scottish legal profession.<sup>15</sup>

**10. What level of dialogue do you maintain with your international counterparts? Please outline the benefits and challenges to cooperation. Please also outline if you are a member of any international networks of regulators, what they are and your experience with them.**

We have regular engagement with regulators in other jurisdictions through our membership of various organisations and networks including the International Bar Association, the Council of EU Law Societies and Bar Associations and the International Conference of Legal Regulators. Although this is primarily for the purpose of benchmarking standards and promoting best practice, being part of these networks allows for greater cooperation when dealing with issues such as regulatory coordination or disciplinary matters.

We are an active member of the Joint Legal Education Forum which brings together the education leads of the Solicitors Regulation Authority (England and Wales), the Law Society of Northern Ireland, the Law Society of Ireland and ourselves. This meets annually discuss major issues in legal education and training. In the context of Brexit, we have had positive dialogue with several EU counterparts to reinforce our commitment to continued collaboration once the UK has fully left the EU lawyers' regime.

<sup>15</sup> See Section 5 Solicitor (Scotland) Act 1980



**11. What are your priorities for supporting UK professionals on your register to have access to their profession in other countries? Please outline any Government support that would help.**

While there is nothing we can do to ensure the professional recognition of our members in other jurisdictions as it will depend entirely on each country's own laws and practice, we aim to maintain and build positive relations with other bars and support any Scottish solicitors working, and looking to work, in that jurisdiction.

In this context it helps that Scotland is a comparatively straightforward jurisdiction for international lawyers to come and requalify, particularly now that we have the QLA in place (although perhaps in the context of FTA negotiations, this doesn't make for a helpful bargaining position, as we have nothing to concede).

The UK Ministry of Justice has been very helpful to date in sharing information relating to the progress of these negotiations and seeking input from us. We hope that this will continue, and that the appreciation of the three distinct legal jurisdictions and solicitor professions within the UK continue to be recognised.

**12. Do you have any provisions for the recognition of professional qualifications held by refugees residing in the UK? If yes, please detail what these are and why you have implemented these provisions. If no, please detail why not.**

No, we do not have specific provisions for this purpose. So far, we are only aware of one individual with refugee status who has enquired about requalifying in Scotland. This person was able to speak directly to a Law Society of Scotland employee. (prior to COVID-19 'lockdown'). The individual concerned has since been granted a Certificate of Eligibility and is seeking to enrol in the QLA at the November 2020 diet.

**Developing Professional Standards and Regulation**

**13. Please describe the process by which UK professionals gain qualifications to enter the profession, including detail on the types of education and training they must undergo and how long it takes to complete them.**

We have robust requirements for those wishing to enter the Scottish solicitor profession. These are focused on ensuring that all those wishing to use the title of Scottish solicitor and provide services within the legal market have the relevant knowledge, skills and understanding to practise and are a fit and proper person to do so. It generally takes seven years of study and formal training before a person can use the title of solicitor.

Although there are other routes to qualification, a person will normally commence their career by completing the Bachelor of Laws (LLB) at undergraduate level, which takes three years for an Ordinary degree or four years for an Honours degree. Following this, if a person wishes to become a solicitor, they must complete the Professional Education and Training (PEAT) programme. PEAT 1 is the vocational element of the route to

qualification also known as the Diploma in Professional Legal Practice. PEAT 2, the work-based learning element of the route to qualification, is a two-year training contract under the supervision of a Scottish solicitor, either in private practice or an in-house legal team, which builds upon the learning of PEAT 1.

Trainee solicitors work to complete a series of outcomes based on knowledge, skills, attitudes and values; undertake quarterly performance reviews and a minimum of 60 hours of Trainee Continuing Professional Development (TCPD), a minimum of 40 hours must be from an authorised provider, approved by the Law Society of Scotland. The TCPD includes a mandatory ethics requirement and the person/trainee must be signed off as fit and proper at the end of the traineeship. There are other requirements: those who wish to be admitted earlier in their traineeship need to undertake a minimum of 20 hours of “sitting in” and a required advocacy course. Individuals will usually go through the Disclosure Scotland process twice – once at Entrance Certificate stage and once at admission.

The education and training requirements are set out within the Admission as Solicitor (Scotland) Regulations 2019 by pursuance of the 1980 Act.<sup>17</sup> We accredit universities to ensure that the legal education delivered to undergraduate students and postgraduate students undertaking the PEAT 1 Diploma in Professional Legal Practice remains consistent and meets required standards and objectives.

**14. Please describe the process you offer for professionals who have gained the relevant UK qualifications to be brought onto your register.**

After a minimum of three months served under a training contract as described above, a trainee can apply for admission to the roll of solicitors and thereafter apply for a restricted practising certificate. If applying for admission between month three and 12, prior to application a trainee must have completed a required advocacy course and have undertaken a minimum of 20 hours of sitting-in observation in the court in which they will be entitled to appear following admission. If applying for admission from month 12 to 24, the trainee is not required to complete the advocacy course or undertake sitting-in.

The admission process involves an application from the trainee and certification from the training firm that the trainee is, in their view, fit and proper to be admitted. The Law Society of Scotland then petitions the Court of Session for the trainee’s admission and once the petition is granted, the trainee may apply for a restricted practising certificate. Restrictions remain in place until the training contract is discharged at the completion of the two-year traineeship and the trainee is then entitled to a full practising certificate.

**15. How often do you review your processes and standards? In your answer, please describe both formal and informal ways this is carried out (e.g. via consultancy, membership surveys) and include detail of any changes you have recently made based to this process.**

Periodic reviews are undertaken, although there is no set timescale. The Admission as Solicitor (Scotland) Regulations, which set the requirements for qualification, were reviewed / redrafted in 2011 and again reviewed during 2018 and 2019 with new regulations coming into force on 1 November 2019. The accreditation standards and guidelines for accreditation of providers of the LLB degree and the PEAT 1 Diploma in Professional Legal Practice were reviewed in late 2019 and early 2020. The need for change is generally identified by Education, Training and Qualifications staff working in conjunction with the relevant regulatory sub-committees: the Admissions Sub-Committee and the Education and Training (Standard Setting) Sub-Committee, both of which comprise a 50/50 split between solicitor and non-solicitor members, all of whom have an interest and expertise in education and training matters.

These sub-committees appoint working parties to focus on aspects of processes and standards and/or consult with the membership, academia and civic society. For example, a working party of experienced civil and criminal court practitioners were involved in considering admission to the roll after three months of training, prior to the 2019 Regulations allowing that possibility for trainees (previously trainees were unable to be admitted until one full year of training had been served).

**16. Thinking about key changes that have been made to your qualification processes, what has been the cause for this change?**

Most often changes are introduced following an internal review which is informed by views of our regulatory sub-committees (which comprise 50% solicitor and 50% non-solicitor membership) alongside feedback from LLB and Diploma providers and firms and organisations which take trainees. The move to earlier admission was prompted by the Sheriffs Association noting the quality of trainee advocacy had improved considerably since reforms to the PEAT 1 process which were introduced in 2011.

**17. Do you feel that the current standards you set, against which applicants are assessed to enter onto the register, are a fair reflection of the level of skill, training, education, and experience required to practise their profession? Please explain your answer.**

Yes. Once a solicitor has qualified, they are eligible to practise across the spectrum of all legal matters. In light of that, we believe it is important that before entering the profession, aspiring members acquire a broad range of knowledge, skills, values and attitudes in the LLB degree. The Law Society of Scotland does not specify specific modules to be studied in the undergraduate degree, but focuses on outcomes to be met through rigorous assessment.

The PEAT 1 Diploma in Professional Legal Practice is a bridge between the academic undergraduate degree and legal practice, allowing students to acquire the vocational skills that are necessary to meet the needs of clients. As with the degree, a wide range of skills and knowledge is acquired during the PEAT 1 study, with teaching largely delivered by practising solicitors. A two-year traineeship is judged to be the appropriate length of time to allow graduates to put the skills and knowledge acquired in the degree and PEAT 1 Diploma into practice under supervision and to develop their abilities and confidence before qualifying.

**18. Please detail any principles of regulation you follow (e.g. proportionality and transparency) and how you uphold them, and whether they support you in your duties as a regulator.**

As referred to above, the Legal Services (Scotland) Act 2010<sup>16</sup> sets out the statutory objectives of the Society which encompass promoting access to justice and competition in the legal sector, supporting the interests of justice and protecting and promoting the interests of consumers and the public interest generally.

The objectives are underpinned by a robust regulatory framework which is set out within the Solicitor (Scotland) Act 1980. We strive to ensure that in fulfilling our regulatory responsibilities, we recognise and apply a regime which reflects the Scottish Government's principles of better regulation.<sup>17</sup> This is focused on the five core themes of Proportionality, Consistency, Accountability, Transparency and Targeted regulation. This is achieved through a collaborative approach of our Regulatory Committee and regulatory sub-committees, supported by experienced, knowledgeable and dedicated teams within the Society who ensure that we proactively act in the interests of consumers in applying the principles of better regulation.

**19. Please detail any requirements you may place on the professionals you regulate and why they are necessary. If you do not impose any requirements, please justify your reasons for not doing so.**

We consider it essential that solicitors maintain their knowledge and skills throughout their career. All solicitors holding a practising certificate are required to complete a minimum of 20 hours of Continuing Professional Development (CPD) in each year, 15 hours of which must be verifiable and a minimum of one hour each year must be on topics related to risk management. All newly assumed partners must complete a new partner Practice Management Course within 12 months of partnership. The course is a combination of online modules and face to face sessions, and covers essential skills for managing a practice - standards of conduct and service adherence; demonstrating good practice in client service; minimising risks and the Master Policy (PII); accounts rules; anti-money laundering regulations; business processes and management

<sup>16</sup> Legal Services (Scotland) Act 2010: <https://www.legislation.gov.uk/asp/2010/16/contents>

<sup>17</sup> Scottish Government Five Principles for Better Regulation:

<https://www2.gov.scot/Topics/Business%E2%80%90Industry/support/better%E2%80%90regulation>

accounts; knowledge of financial imperatives in running a business; responsibilities to the profession and the public; ethical dimensions; and business development and strategic planning.

There are numerous other requirements upon certain members. Solicitor advocates – members who have passed assessment and been granted rights of audience in the Higher Courts – are required to undertake 10 hours of CPD relating to advocacy every year. (Around 350 members are solicitor advocates)

Accredited Family Mediators are required to undertake no less than 15 hours of CPD per year and this must comprise (a) a minimum of six hours mediation training (b) five hours of family law training inclusive two hours on financial provisions (c) undertake one peer review in co-mediation p/a (d) one assessment of competence by an approved assessor every three years. (Around 75 members are Accredited Family Mediators).

Those members who are registered to undertake legal aid work are required to be peer-reviewed periodically. This is either firm based (civil legal aid) or practitioner-based (criminal legal aid, child legal aid).

**20. Please describe the process by which you determine your application fees. Please set out any principles or guidelines you adhere to when determining fee amounts.**

Fees for the process leading to admission as a solicitor are calculated annually with consideration given to the human resource cost of running the process.

For a solicitor to hold themselves out as a practicing Scottish solicitor, and therefore undertake activities which are reserved under section 32 of the 1980 Act, the solicitor is required to hold a current Practicing Certificate which is issued by us. The practising certificate is subject to annual renewal with a fee payable. As a membership professional body, we rely entirely on the renewal fees as our primary source of income. The annual renewal fee is determined by reference to proposed budgets and forecast resources required to satisfy our operating plan, strategy, and regulatory and representative functions, therefore ensuring we satisfy our statutory objectives and responsibilities.

**21. Please detail any changes that you are considering for your sector to ensure the profession you regulate stays relevant to current challenges. Does current regulation allow for you to make these changes?**

As will be appreciated, the most current and pressing challenge's facing the legal profession are those resulting from the COVID-19 pandemic. This has had a significant impact on many aspects of the Scottish solicitor profession, from qualification and entry into the profession through to being able to continue practicing as a solicitor. As a responsible and supportive professional body, we have had to make several changes to

support the Scottish solicitor profession at this difficult and challenging time, balancing these carefully, recognising, and without diluting, overall consumer protections.

One of the ongoing challenges is innovation in legal services delivery and the expectations for legal services providers to recognise and adapt to technological evolution and the advancement of artificial intelligence (AI). The adoption of AI-driven decision-making systems is becoming a significant and rapidly emerging business model. However, there are regulatory challenges, ensuring the interests of justice and professional principles are maintained as the automation of legal services through AI increases.

As touched on briefly and previously in this response, the legislative framework under which we administer the regulatory regime is in many respects outdated and prescriptive. The Solicitors (Scotland) Act 1980 does not recognise or reflect the changes of behaviour, such as business models and the way in which legal services are delivered, which have materialised and continue to evolve over recent years. Although we strive to excel in fulfilling our regulatory function and objectives, we often find ourselves constrained by the sometimes narrow parameters of the current legislation. The 1980 Act did not, and could not, envisage the changes in social, consumer and business needs, expectations and demands of consumers and small business as well as the way legal services are now delivered beyond the high street and extending to delivery by new innovative methods, including online.

In December 2015, we submitted our paper, *The Case for Change*<sup>18</sup>, to the Scottish Government. The purpose of the paper was to inform the Scottish Government of the current legislative framework for Scottish solicitors, primarily the Solicitors (Scotland) Act 1980, and the impact that changes in the Scottish legal services market have had on the workability of this. We set out our desire for the introduction of a new effective, proportionate and permissible legislative framework which would allow for the proactive and effective regulation of the legal services market and legal profession with a central focus on consumer protection.

We believe the benefits of effective and proportionate regulation are considerable. Through setting a robust route to qualification, fit and proper testing and strict rules of conduct, we can ensure those providing legal services to clients, often in difficult and stressful circumstances, deliver a high standard of service. Effective regulation also ensures there is proper consumer redress, appropriate compensation and measures to enforce professional discipline for those few instances when things go wrong.

<sup>18</sup> For further information see: <https://www.lawscot.org.uk/media/10152/the-solicitors-scotland-act-1980-the-case-for-change-regulation-pa.pdf>



As a direct result of our 2015 paper, the Scottish Government, in collaboration with stakeholders, is currently reviewing the regulatory framework for Scottish legal services and a public consultation on this is expected towards the end of 2020.

**22. Please detail any steps you take to help make sure that your standards and processes are adaptive, support innovation and promote social mobility.**

The Law Society of Scotland is currently exploring the possibility of developing an apprenticeship route to qualification as a solicitor in Scotland, working with Skills Development Scotland, a university partner and a number of interested solicitors' firms. In addition, we encourage university providers of the LLB and the PEAT 1 Diploma and training firms and organisations to innovate in their programmes of education and training. We are also exploring other work-based routes which aren't a formal apprenticeship.

The Law Society of Scotland has established a charity, the Law Society of Scotland Education Foundation,<sup>19</sup> "Lawscot Foundation", to support students from less advantaged backgrounds who have the ability and the desire to qualify as solicitors but who may not be able to do so due to their personal financial circumstances. The Lawscot Foundation is currently supporting 30 students by means of a bursary and the support of a trained mentor. It provides a number of opportunities each year for the students it supports to engage with different sectors of the profession through events and insight days.

The Education, Training and Qualifications team run a successful Street Law programme<sup>20</sup> in low progression schools; an annual schools debating competition and a series of Legal Studies and Careers Days, all helping to raise aspirations amongst school pupils, as well as working closely with widening participation teams in universities.

In recent years we have also introduced an Accredited Paralegal Status. This is a voluntary accreditation for paralegals working in Scotland. It aims to provide a defined professional status and a career path for paralegals. It increases awareness of the role of the paralegal in Scotland and sets a consistent standard for paralegals to attain. The Accredited Paralegal Status is open to anyone working as a paralegal under the supervision of a Scottish solicitor, either in private practice or in-house.

We have also recently created the professional status of Accredited Legal Technologist. This accreditation gives recognition to those who have outstanding expertise and knowledge in the field of legal technology.

<sup>19</sup> For further information see LawScot Foundation: <https://www.lawscotfoundation.org.uk/>

<sup>20</sup> For further information see Street Law: <https://www.lawscot.org.uk/qualifying-and-education/our-work-with-schools/street-law/>



Over the last few years, we have seen a flourishing of new legal roles such as legal process engineer, legal analyst and legal technologist. We believe that this trend will continue and intensify over the coming years.

### **Continuous Professional Development (CPD)**

**23. Please detail any continuous professional development that is required for professionals to remain on your register. Please include detail on how often this should take place, in what form, as well as the benefits of adhering and consequences of not adhering to these requirements.**

All Scottish solicitors and Registered European Lawyers are required to undertake a minimum of 20 hours CPD in each practice year (1 November – 31 October).<sup>21</sup> Of those minimum 20 hours, at least 15 must be verifiable CPD. Up to five hours may be by private study and as of the CPD year commencing 1 November 2018, one hour of risk management CPD must be included. The requirement for CPD is set out within the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993.<sup>22</sup> Solicitor advocates must complete 10 hours of mandatory Solicitor Advocate CPD as part of the minimum 15 hours of verifiable CPD.

Verifiable CPD means that the CPD activity should meet the following criteria:

- Have clear aims and outcomes relevant to the solicitor's professional development;
- Provide interaction and/or the opportunity for feedback;
- Be able to be evidenced and
- Is not part of a solicitor's daily work.

As CPD is a requirement, Regulation 6 of the 1993 Regulations provides that any breach of the Regulations (i.e. any failure to comply with the requirement relating to CPD) may be treated as professional misconduct for the purposes of Part IV of the 1980 Act (Complaints and Disciplinary Proceedings) and therefore could result in disciplinary proceedings been brought against the solicitor in question.

### **Diversity and Inclusion**

**24. Do you collect data on the diversity of both your UK and international applications? For example, on gender or ethnic background.**

We collect data at different stages of the qualifications process in the following ways;

<sup>21</sup> For further information see: <https://www.lawscot.org.uk/members/cpd-training/cpd-requirements/>

<sup>22</sup> Solicitors (Scotland) (Continuing Professional Development) Regulations <https://www.lawscot.org.uk/media/9412/sol-scotland-cpd.pdf>

- University students completing a qualifying law degree at a Scottish university - as part of the process to accredit universities to provide qualifying degrees, we require these universities to provide annual reports including inter alia equality data on the students undertaking the degree. This covers the following two areas:
  - For students and applicants applying to or enrolling on the first year of the degree:
    - Home address of the applicant (Scotland/Rest of UK/EU/Other)
  - For students enrolled in the first year of the degree:
    - Secondary education
    - SIMD
    - Ethnicity
  - For the total student population enrolled on an accredited degree course:
    - Home address of the applicant (Scotland/Rest of UK/EU/Other)
    - Gender
    - Declared disability
    - Age
    - Ethnicity
- Students completing the Diploma of Legal Practice (PEAT 1) – as part of the process of accreditation to provide the Diploma/PEAT 1 programme universities are required to provide annual reports to include inter alia equality data on the students completing the diploma to cover the following:
  - For students and applicants applying to or enrolling on Diploma/PEAT1 course:
    - Home address of the applicant (Scotland/Rest of UK/EU/Other)
  - In addition for students enrolled on the DipLP course
    - University where LLB degree completed
      - SIMD
      - Ethnicity
      - Gender
      - Declared disability
- At the stage of applying for Entrance Certificate following completion of the Diploma of Legal Practice/PEAT 1, we collect data on the gender and age of each applicant. This does not include applicants who are re-qualifying from another jurisdiction as they pursue the Qualified Lawyers Assessment (QLA), and as such omit this step.

- For those who re-qualify from another jurisdiction and completing the QLA, at the first stage which is to apply for a certificate of eligibility, they are required to disclose their age (by providing their date of birth) and their marital status.
- At the stage of applying for admission to the profession within Scotland, we collect data on the age and gender of the applicants. All applicants, both from within Scotland, the other UK jurisdictions and from other jurisdictions are required to apply for admission to the profession regardless of their route to qualification prior to this stage.
- All solicitors (regardless of how they qualified) must apply for a practising certificate each year to retain their right to practise as a Scottish solicitor. From 2020, we are collecting certain equality data. Supplying this information is not mandatory although we strongly advise members fill in the data even if they select 'prefer not to say'. This will be reviewed in the future depending upon voluntary compliance levels. The data collected is:
  - o Health/disability
  - o Ethnicity
  - o Sexual Orientation
  - o Religion and belief
  - o Type of secondary school attended (social mobility indicator)
  - o The occupation of the main/highest earner in the applicant's household at around age 14. (Social mobility indicator)

Before 2020, data has been collected through a detailed survey of the profession conducted at three – five-year intervals since 2006. This provides us with detailed data on a cross section of the profession and has focused on different areas at each iteration of the survey such as impact of parenthood, flexible working, and experiences of bullying and harassment. While the survey is voluntary, for each one we have had a high level of engagement with between 20 – 25% of the profession completing the survey on every occasion. This has ensured that we have a robust set of data and can also track changes in the profession by comparison of the results since the first version in 2006

## **25. Please outline any steps you take to eliminate unconscious bias from your recognition process.**

Our recognition process has several different stages, involving the input of different organisations and people. Each method of qualifying requires the applicant to sit a form of examination. For those qualifying via the route of LLB followed by the Diploma in Legal Practice, they will need to meet the prescribed outcomes and this will usually be assessed by a series of examinations. Each university is responsible for setting and marking the

exams. We have been advised by at least one Scottish university who has undertaken unconscious bias training with their staff.

In relation to the QLA, the examinations are overseen by a Board of Examiners who set the exam papers when they are advised which subject papers are required. Each examiner is responsible for their own area of law, in which they will prepare the papers and mark the candidate's exam scripts. The examiners will follow the marking scale which has been set by the Board/Society. If a position on the Board is to become available, this will be advertised (usually sent to LLB and Diploma in Professional Legal Practice heads) and applicants will be required to complete an application form, just as they would for a job interview.

Involving a diverse group of people and organisations reduces the impact of any unconscious bias. Moreover, the route to qualification has been subject to a number of Equality Impact Assessments in recent years. We have recently built in unconscious bias training to the Practice Management Course – the mandatory course that all new partners must undertake. This will continue going forward.

**26. Please outline any steps you take to support job creation in the profession you regulate.**

We do not have any targeted schemes with the aim to create jobs. Instead we support the profession and their employers to develop and grow their businesses allowing for expansion and new jobs to be created.

**27. Please outline any steps you take to attract a diverse workforce to the profession you regulate.**

As outlined in the response to question 22 above, The Education, Training and Qualifications team runs a successful Street Law programme<sup>23</sup> in low progression schools; an annual schools debating competition; a series of Legal Studies and Careers Days, and also ran a successful campaign, "One Person, Many Journeys,"<sup>24</sup> featuring real-life solicitors from a diverse range of backgrounds, all helping to raise aspirations amongst school pupils from across Scotland and from different backgrounds.

We also work closely with widening participation teams in universities, and this year we are running a virtual law fair, "Celebrating Inclusion Event and Law Fair"<sup>25</sup> focusing on inclusion and diversity of the profession. This will enable law firms to meet and engage with a diverse range of law students who will form the next generation of solicitors in Scotland. We have also run a number of careers and outreach days across Scottish cities.

<sup>23</sup> For further information see Street Law: <https://www.lawscot.org.uk/qualifying-and-education/our-work-with-schools/street-law/>

<sup>24</sup> For further information see: <https://www.lawscot.org.uk/qualifying-and-education/our-work-with-schools/one-profession-many-journeys/>

<sup>25</sup> For further information see: <https://www.lawscot.org.uk/news-and-events/events/celebratinginclusionlawfair/>

Other examples include:

- Our staff and office-bearers attending Edinburgh and Glasgow Pride in 2019 and hosting a Pride Inside event in 2020.
- Organising a '*These are our principles*' campaign with the profession's LGBT+ networking group.
- Running a successful virtual Eid campaign in 2020 and running articles around Rosh Hashanah and Yom Kippur in 2020.
- We support in numerous ways Scottish Ethnic Minority Lawyers' Association, The Glass Network (LGBT+ network); Women in Law Scotland; and the Scottish Feminist Judgements Project. Support can range from finance, to offering speakers, to promoting events.
- We have held focus groups with law students, trainees and newly qualified solicitors from a BAME background to learn more about their experiences of the route to qualification.
- We have a commercial tie-up with Rare Recruitment.<sup>26</sup> This is a software system that contextualises recruitment processes for traineeships.<sup>27</sup> A small number of firms took part last year via our tie-up, which is specifically aimed at firms which take on small numbers of trainees. It allowed them to access to Rare's software for a reduced rate. Any legal employer who recruits below 10 trainees per annum is eligible to join the programme, until our scheme is full. Rare contextualises the achievement of all candidates. It is quite clear from feedback from participating firms that this leads to a greater diversity of applicant, interviewee, and successful candidates. This will benefit future trainees from BAME backgrounds and, also, white future trainees from less advantaged backgrounds.

### **Additional Information**

#### **28. Please detail any other information or evidence that you think we should take into consideration during this Call for Evidence.**

In addition to this response, the Law Society of Scotland wishes to draw attention to the collective response made by the Professional Associations Research Network (PARN) which we have endorsed.

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<sup>26</sup> For further information see: <https://www.rarerecruitment.co.uk/clients/>

<sup>27</sup> For further information see: <https://www.lawscot.org.uk/qualifying-and-education/social-mobility/rare/>