

The Regulation of Legal Services (Scotland) Bill Call for Views

Response from the Competition and
Markets Authority

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1. Background

About the CMA

1. The CMA is the UK's principal competition and consumer authority. It is an independent non-ministerial government department, and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. The CMA has a role in providing information and advice to government and public authorities.² The CMA's advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and consumers. In particular, the CMA protects people from unfair trading practices, including in cases where unfair treatment suggests there may be a systemic market problem. The CMA will investigate entire markets if it thinks there are competition or consumer problems.
3. The CMA publishes materials such as the [Competition Impact Assessment guidelines](#) to help policymakers consider the impacts that policy proposals will have on competition, consumers and markets.
4. The CMA has significant experience working in the legal services sector across the UK, including our research report on the Scottish legal services sector in 2020 (the CMA Research Report),³ which followed our England and Wales market study in 2016,⁴ as well as our 2020⁵ review of the implementation and impact of the market study recommendations (respectively, the CMA Market Study and the CMA Review). The CMA also responded in 2019⁶ to Esther Roberton's independent review of legal services regulation in Scotland (the Roberton Report) and to the Scottish

¹ The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, "on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law)."

³ [Research report - Legal services in Scotland \(publishing.service.gov.uk\)](#)

⁴ [Legal services market study - GOV.UK \(www.gov.uk\)](#)

⁵ [Final report \(publishing.service.gov.uk\)](#)

⁶ [CMA's response to the Roberton Review \(publishing.service.gov.uk\)](#)

Government's subsequent consultation on legal services regulation in Scotland (CMA Response to Scottish Government consultation).⁷

5. This response to the [call for views on the Regulation of Legal Services \(Scotland\) Bill](#) sets out the CMA's views specifically on the questions as set out by the Equalities, Human Rights and Civil Justice Committee.
6. The CMA notes that the work by the Scottish Government to develop its policy in relation to this market is ongoing. We understand that stage 1 is to be completed by 15 December 2023 according to the timetable for the Regulation of Legal Services (Scotland) Bill.⁸ Consequently, the CMA may wish to supplement its responses to the questions herein and to discuss other issues not covered in this response. The CMA understands that the Scottish Government will continue to consider its approach to aspects of the Bill, taking into account stakeholder views and forthcoming stakeholder engagement over the coming months. The CMA intends to engage with the policy discussions as they progress.
7. The CMA has responded to the specific questions, both by drawing on the issues on which we have previously undertaken research and analysis and by identifying practical observations about the implementation of specific Bill provisions, or otherwise where it considers that its views might help in the effectiveness of the new framework overall. Accordingly, the structure of this response will follow the sequence of questions as asked in the call for views.

⁷ [Response: Scottish Government consultation on legal services regulation in Scotland \(publishing.service.gov.uk\)](#)

⁸ [S6M-09502 | Scottish Parliament Website](#)

2. CMA Responses

Question 1 – What are your views on:

- a) *the principal recommendation of the Robertson Review that an independent regulator should be created to regulate legal professionals.*
- b) *the Scottish Government’s decision to “build on the existing framework” rather than follow that principal recommendation.*
- c) *whether there is a risk that the proposals could raise concerns about a potential conflict of interests*

CMA Response to question 1

8. The CMA supports the Robertson Review’s principal recommendation to create an independent regulator for Scottish legal professionals. That approach provides a regulatory model for the legal services sector in Scotland that is best able to ensure that regulation can protect consumer interests, including by promoting competition among providers leading to improved choice and innovation, as well as wider public interest issues. The CMA previously welcomed the recommendation to establish a regulator that is independent from the profession and government, for reasons set out both in its response to the Robertson Review,⁹ in the CMA Research Report¹⁰ and in the CMA Response to Scottish Government consultation.¹¹
9. The current arrangements whereby the main regulators of legal services providers are also the profession’s representative bodies creates potential for conflicts of interest. As discussed in the CMA Research Report, there is an inherent tension between the responsibility to regulate in the consumer interest and the responsibility to represent the interest of their members effectively.¹² In the [CMA Research Report](#), we highlighted several concerns that have arisen in practice under the current arrangements.¹³ These include several examples where this conflict of interest may have led to the Law

⁹ See CMA (2018), [Competition and Markets Authority’s response to the Independent Review of the Regulation of Legal Services in Scotland](#), paragraphs 28 to 30 and 48 to 51

¹⁰ [Scottish legal services research - GOV.UK \(www.gov.uk\) chapter 5](#)

¹¹ [CMA response to the Scottish Government consultation on legal services regulation in Scotland](#), paragraphs 9-19

¹² [Scottish legal services research - GOV.UK \(www.gov.uk\)](#)

¹³ See [Scottish legal services research - GOV.UK \(www.gov.uk\)](#), paragraphs 5.28 to 5.61

Society of Scotland (LSS) and the Faculty of Advocates (FoA) to prioritise the interests of their members over those of consumers in setting regulation or advocating for pro-competitive measures. In addition, there are concerns about the lack of transparency and accountability of the current arrangements and a negative impact on public perception and trust.

10. The Scottish Government's chosen model (as reflected in the Bill) of an enhanced accountability and transparency model which "***builds on the existing framework***" is not, in the CMA's view, substantially different from the current arrangements in relation to the degree of independence it affords the regulator from the interests of the profession. For reasons set out in the CMA Response to Scottish Government consultation, this model brings with it the risks associated with the current arrangement in which the main regulators of legal services providers are also representative bodies.¹⁴
11. In the CMA Response to Scottish Government consultation, the CMA set out its concerns about the use of an independent regulatory committee and the reasons why it considered that the form of internal separation proposed would not address concerns regarding independence.¹⁵
12. In respect of independent regulation under the Bill, the CMA notes that the Bill sets out various checks and balances that are designed to mitigate some of these risks. For example, section 9 of the Bill sets out the requirements by which category 1 regulators must carry out their regulatory roles independently of other functions or activities (and properly in all respects). In particular, when establishing and maintaining a regulatory committee the category 1 regulator must ensure that the governing body of that regulator does not interfere with the committee's functions. They must also ensure that any questions on regulatory matters are always delegated to the committee - and that the committee is adequately funded and resourced. The section sets out further that it is for the committee to determine its own structure and governance, and that the committee and the category 1 regulator's governing body must agree arrangements for resolving any matters of dispute that arise.
13. Further separation from the professional representative function is created by the requirement that at least 50% of the committee must be lay members, with important exclusions on persons being members if they have lost their right to practice - or were formerly involved in the governance of the regulator.

¹⁴ [CMA response to the Scottish Government consultation on legal services regulation in Scotland, paragraph 12](#)

¹⁵ [CMA response to the Scottish Government consultation on legal services regulation in Scotland, paragraph 13 and section C.](#)

Category 2 regulators must also exercise their regulatory functions independently of any other roles or activities, and properly in all respects, although there is no requirement to form a separate regulatory committee for category 2 regulators.

14. The CMA acknowledges that the Bill strives for independence for regulatory functions through their operational arrangements and constitution. Taken together with the oversight roles in section 19 and 20 (explored below) the Bill seeks to create a backstop to protect and maintain independent regulation.
15. Nevertheless, in the view of the CMA, the lack of true separation of functions retains an inherent conflict of interest that is likely to undermine this ambition. The CMA is concerned that, regardless of composition, regulatory committees do not deliver the required independence where they sit within a body that also carries out representative functions, and as such, cannot alone resolve the intrinsic conflict of interest between representative and regulatory functions. This is supported by the experience of England and Wales, discussed below in response to question 5.
16. Finally, the CMA also considers that preserving the profession's independence from government is an important aspect of independence. As set out in its study into legal services in England and Wales,¹⁶ the CMA's view is that an independent legal profession is important for securing various public interest considerations such as protecting the legal rights of individuals and ensuring access to justice so that individuals can participate equally in society. The CMA observes that in the regulatory arrangements proposed in the Bill the Scottish Government has a more significant role than would be the case with an independent regulator.

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

CMA Response to question 2

17. As explained in its response to the Robertson Report,¹⁷ the CMA considers that an optimal regulatory framework would have the following characteristics: it would have a clear overall objective, and be independent, targeted, flexible, proportionate and clear in scope, enforceable and consistent.¹⁸ These

¹⁶ *Final report (publishing.service.gov.uk), paragraph 5.145*

¹⁷ *CMA (2019), Response to the report of the independent review of regulation of legal services in Scotland, paragraph 8.*

¹⁸ *CMA (2016), Legal services market study, England and Wales, chapter 6.*

characteristics align with the better regulation principles set out in the Regulatory Reform (Scotland) Act 2014.¹⁹ The CMA's view is that a more straightforward regulatory framework is more likely to be able to meet these characteristics than an overly complex framework. However, the CMA has not considered in any detail the complexity of the regulatory framework in Scotland and whether it could be simplified.

18. We do however recognise that the optimal regulatory framework must take into account the characteristics of the legal services sector in Scotland and not introduce unnecessary complexity and cost. It was for that reason that we expressed some concerns in the CMA Response to Scottish Government consultation, about option 2, the market regulator model.²⁰

Question 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?

CMA response to question 3

19. As to the division of legal services regulators into two categories, the CMA notes that this is an attempt to impose a proportionate and risk-based level of regulatory burden contingent on the type of legal services to be regulated. Category 1 regulators are those deemed to have a significant membership or a membership providing largely consumer-facing services, whereas Category 2 regulators are those whose membership is more specialist in nature in terms of the legal work undertaken and comparably smaller in number - such as advocates and commercial attorneys. In contrast to Category 2 regulators, Category 1 regulators face additional requirements to establish regulatory committees to perform regulatory functions and must establish a compensation fund.
20. The CMA notes that part of the rationale for the difference in requirements imposed on Category 1 and Category 2 regulators is that Category 1 regulators are 'responsible for legal services providers that typically provide a broad range of legal services directly to the public'.²¹ The CMA agrees that the size of the membership, as well as the range of services requiring regulation that it provides, are relevant considerations in determining whether

¹⁹ *Regulatory Reform (Scotland) Act 2014, section 1(6)(3).*

²⁰ [CMA response to the Scottish Government consultation on legal services regulation in Scotland, paragraphs 14-17.](#)

²¹ *Explanatory notes, paragraph 41*

the requirements on the regulator are proportionate, given that these requirements may carry significant associated costs.

21. However, it is less clear that the extent to which a regulator's membership provides services directly to the public should be a primary factor in determining these requirements. The CMA notes that the primary purpose of regulatory committees is to ensure a greater degree of independence between a regulator's representative and regulatory functions and to mitigate the inevitable conflicts of interest that arise in performing these functions within a single organisation.
22. Notwithstanding the CMA's view that regulatory committees may be insufficient to achieve this purpose (as set out in response to question 1), the CMA considers that similar considerations apply to regulators whose membership do not provide services directly to the public. In particular, it considers that regulatory reforms intended to encourage greater competition between providers or to reduce the barriers to entry for new providers and encourage the adoption of new technologies can improve the quality and cost of legal services and are ultimately of great significance to the public, whether or not these services are provided directly to consumers. Similarly, regulatory reforms designed to protect consumers are of significance even where barristers are instructed by solicitors since barristers will owe a duty to their ultimate client – the critical point in setting the appropriate level of regulation is whether or not consumers face risks of harm arising from these services being provided poorly or inadequately. However, these reforms may often not align with the interests of incumbent providers.
23. The CMA is therefore not persuaded that it is appropriate to distinguish between Category 1 and Category 2 regulators for the purposes of the requirements to establish regulatory committees to perform regulatory functions.

Question 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?

CMA response to question 4

24. Notwithstanding the CMA's views on the lack of fully independent regulation under the new framework in the Bill, the inclusion of regulatory objectives in section 2, underpinned by better regulation principles in section 3(4), is a

welcome approach to regulation in the Bill.

25. As set out above, the CMA would reiterate its view that the most appropriate regulatory model for the legal services sector is one where the regulator is independent from both the profession and government. Notwithstanding this, we note that sections 19 and 20 are intended to provide checks and balances to ensure that the regulators exercise their regulatory functions in a way that is compatible with the regulatory objectives or in the public interest. However, the CMA considers further clarity is required about how Section 19 and Section 20 would operate in practice. As currently drafted, Section 19 in particular gives rise to two important questions.
26. First, it is difficult for the CMA to reach a view on section 19 without greater clarity in relation to the operation of any oversight role for the CMA being proposed. Our current understanding, based on ongoing engagement with the Scottish Government, is that there is no intention under this section to create a new or ongoing duty on the CMA to monitor the Scottish legal services market. Instead, we understand that the Scottish Government intends that the role that the CMA plays as a competition and consumer authority means that it is well-placed to have a limited role as one of the bodies that could request (and hence perhaps trigger) a Ministerial review if the CMA harboured specific concerns about the work of the regime.
27. Regardless of intent, the CMA believes there is a risk that the current drafting of Section 19 implies a wider or more active duty, leading to expectations of a standing and ongoing role for the CMA to monitor the new regulatory framework implemented by the Bill. Further, there is an inherent tension created whereby the CMA is given a public role under the legislation, yet the underlying policy intention is that the CMA has discretion not to act pursuant to that role.
28. While a definitive view has not yet been reached on the proposals, the CMA would also emphasise that its role in promoting competitive markets and tackling unfair competition is not limited to any one market or sector. The CMA operates across the whole of the UK economy and decisions on which market is worthy of investigation is led by, among other things, the competition law framework and prioritisation principles. While the CMA may decide to undertake work in the legal services markets in the future, if that work is undertaken pursuant to the CMA's general duties, it is not possible for the CMA to make commitments to do so – circumstances may mean that the CMA is obliged to decide to prioritise another sector or market depending on respective resources and priorities.

29. The second point relates to the evidence base and threshold by which the CMA, and the other bodies named in Section 19, may make a request to Scottish Ministers to review the performance of regulatory functions by category 1 and category 2 regulators.
30. The threshold set out in Section 19(2) could be perceived to create an unclear and subjective test for what might constitute a regulatory failure. Furthermore, it is silent on the evidential threshold sufficient to trigger a review request to Scottish Ministers. Greater clarity on this would aid understanding of how and when Scottish Ministers could exercise the powers in Section 20.
31. There exists a related, practical point as to how the bodies referenced in Section 19 will source and gather the evidence sufficient to reach a threshold to request a review by Scottish Ministers. This relates back to the wider point made about an ongoing and enduring role for the CMA in this sector.
32. Section 20 then sets out a range of measures by which Scottish Ministers *may* act following a request under section 19. The measures include financial penalties, directions, censure statements, new performance targets, or even removal of some or all regulatory functions from the regulator. The CMA considers these options appear to be broad and flexible measures to rectify regulatory failures, were they to be needed. There are however questions about whether the organisation requesting a review under section 19 would have an ongoing role in assisting the Scottish Ministers when they considered the scope for taking measures under section 20, for example, in evidencing the merits of its request for a review and assessing the effectiveness of proposed measures or a subsequent role in monitoring the effectiveness of any measures put in place by Ministers following a review.
33. These are important issues to resolve since without access to evidence and a clear understanding of the basis on which to trigger a review, the protections envisaged by these sections risk being inadequate to address regulatory failure.

Question 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?

CMA response to question 5

34. The CMA has previously considered the issue of independent regulation in England & Wales. Regulatory reform in England and Wales in the 2000s and

2010s gave frontline legal services regulators in England and Wales greater safeguards to ensure independence than currently exists in Scotland. Those safeguards include functional separation through the creation of regulatory arms that are separate from the representative bodies.

35. Notwithstanding the greater safeguards in England and Wales, the CMA recognised concerns in the CMA Market Study²² that the arrangements had failed to adequately ensure that frontline regulators could operate freely without influence from their representative bodies. Further safeguards were subsequently introduced by the LSB which, at the time that the CMA conducted the CMA Review in 2020,²³ we considered to have delivered greater structural independence, albeit that we noted the need to consider the case for full separation as part of a broader review of the legal services regulatory framework.²⁴
36. The experience in England and Wales illustrates that any incomplete separation has the potential to give rise to an inherent conflict between the responsibility to regulate in the consumer interest and the responsibility to represent the interest of their members. This has the potential to affect regulatory outcomes for reasons explained above (see in particular paragraph 11). In the CMA's view therefore, a model that relies on regulatory committees does not fully address concerns outlined.

Question 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?

CMA response to question 6

37. The CMA was supportive of the Robertson Report recommendation to reform the current complaints and redress framework.²⁵ However, the CMA has not considered this area in detail and so is not best placed to provide an assessment of the proposals in the Bill.

²² [Final report \(publishing.service.gov.uk\), paragraphs 5.145-5.150](#)

²³ [Final report \(publishing.service.gov.uk\)](#)

²⁴ *Ibid* at paragraphs 5.67 to 5.74.

²⁵ See CMA (2018), [Competition and Markets Authority's response to the Independent Review of the Regulation of Legal Services in Scotland](#), paragraphs 43 to 45

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

CMA response to question 7

38. The CMA considers that the proposals in the Bill to change the threshold of ownership by qualifying investors from 51% to 10% for a business entity to be eligible to be a licensed legal service provider are a move in the right direction. As noted in the response to the consultation on legal services regulation in Scotland,²⁶ the CMA's view is that the 51/49 ownership threshold is a barrier to participation in the ABS scheme and consequently that the relaxation of this rule might allow for greater introduction of ABSs to Scotland. The CMA's view is that any risks from relaxation of this ownership rule are likely to be low.
39. The CMA Research Report²⁷ identified several potential benefits of ABSs. The use of such structures could enable firms to access external capital and to achieve efficiencies by exploiting economies of scale, to develop brands and to offer greater convenience for consumers seeking a one-stop shop. The ABS structure could allow practices to retain high-performing non-solicitor employees or attract outside talent by rewarding them with a direct stake in the firm. Furthermore, the involvement of non-legally qualified practitioners in management could facilitate the entry of more 'business-oriented' firms with a longer-term perspective. New entry and investment capital could also allow partners in small firms who wish to retire opportunities to do so without closing the firm, by transferring ownership.
40. The CMA's view is that benefits should allow for the introduction of ABSs with genuinely novel and innovative business models that are able to compete with traditional law firms. This competition should mean that consumers will ultimately have greater choice and be able to benefit from innovative, higher quality services provided at lower cost.
41. However, while the CMA considers that the proposals in the Bill are a move in the right direction there is little justification for there being any ownership threshold. In this regard the CMA notes that in England and Wales the legislation allows for the ownership of an ABS to be completely open, subject

²⁶ [Response: Scottish Government consultation on legal services regulation in Scotland \(publishing.service.gov.uk\)](#), paragraph 41

²⁷ [Research report - Legal services in Scotland \(publishing.service.gov.uk\)](#)

to meeting certain suitability requirements and, for ABSs regulated by the SRA, provided the ABS is managed by a solicitor.

42. The CMA notes and welcomes the policy intention to allow third sector organisations to directly employ legal professionals to undertake reserved activities and to apply to become legal services providers.²⁸ As noted in the CMA Response to Scottish Government consultation,²⁹ the CMA also believes that there may be benefits to Scottish consumers from removing the restrictions on advocates forming partnerships (whether with other advocates or in ABSs with legal and/or non-legal professionals) or accepting instructions directly from consumers should they choose to do so. As set out in the CMA Research Report,³⁰ lifting this restriction would allow for efficiencies and streamlining of processes, which may result in reduced costs and increased choice for consumers.

Question 8 : *What are your views on the provision of:*

a) *“Entity regulation” (as set out in Part 2 of the Bill)?*

CMA response to 8 a)

43. The CMA notes the potential benefits from the introduction of entity regulation of better consumer protection and meeting of consumer expectations, greater consistency in standards and greater collation of data.³¹ In the response to the Robertson Report, the CMA set out its support for including an element of entity regulation in the regulatory framework for authorised providers, similar to the one currently in place in England and Wales. A balance between individual and entity regulation is needed.
44. The CMA considers that requiring all legal professionals licensed through the regulator to also be licensed through an entity has the potential to result in disproportionate regulatory costs. There is a risk that regulation (and its associated costs) is extended to those activities undertaken by licensed entities which carry a low level of risk. This may place licensed providers at a competitive disadvantage to unlicensed providers when undertaking low-risk, unreserved activities.

²⁸ Policy Memorandum, paragraphs 170 to 171

²⁹ See paragraph 42b)

³⁰ CMA (2020), Scottish legal services research, paragraphs 4.65-4.70.

³¹ Policy Memorandum, paragraph 187

45. In addition, as noted in the CMA Market Study,³² requiring all licensed professionals to also be licensed through an entity restricts the entities within which certain professional titles can be employed. This would be the case particularly for solicitors, who would be restricted from working in unlicensed providers, even when carrying out only unreserved legal activities. A lack of access to regulated titles may restrict the ability of unlicensed providers to compete given the impact that these titles have on consumer decision-making and trust. Unlicensed providers would also be less able to harness the expertise of solicitors. This may directly affect the services that unlicensed firms can offer and reduce their ability to compete. This is relevant as unlicensed firms may employ different innovative business models or may be able to offer the same services that solicitors offer in relation to unreserved legal activities more cheaply than licensed entities.

b) title regulation for the term "lawyer" (section 82)?

CMA response to 8 b)

46. Professional titles have the potential to affect consumer decision-making. Consumers may choose to rely on such titles when navigating the market as an indicator of quality or an indicator of the regulations they might benefit from. Consequently, the regulation of such titles has the potential to have both positive and negative consequences. On one hand, protection of the term 'lawyer' may address a legitimate concern if consumers assume that the term means that the provider is subject to regulation that is of benefit to the consumer. On the other hand, it may also have an unintended negative impact on competition if it makes it harder for unlicensed providers to advertise and promote their services to consumers (who may incorrectly assume that only a 'lawyer' can provide certain services).
47. As noted in response to the Robertson Report³³ and the CMA Response to Scottish Government consultation,³⁴ the CMA has not seen compelling evidence of the detriment suffered by consumers because the term 'lawyer' is not currently protected. The CMA is therefore cautious about whether the benefits of protecting this term outweigh the possible negative consequences for competition.

³² See CMA (2016), *Legal Services Market Study*, paragraphs 5.100 to 5.104.

³³ See paragraphs 38-42

³⁴ See paragraph 38.

Further comments –

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

48. **Definition of legal services/legal services provider** – The CMA notes under Regulation 6 that legal services and legal services providers are defined for the purposes of the Bill as –
- (1) –
- (a) *the provision of legal advice or assistance in connection with—*
- (i) *any contract, deed, writ, will or other legal document,*
 - (ii) *the application of the law, or*
 - (iii) *any form of resolution of legal disputes,*
- (b) *the provision of legal representation in connection with—*
- (i) *the application of the law, or*
 - (ii) *any form of resolution of legal disputes.....*
- (4) *In this Act, “legal services provider” means a person or body that provides legal services (whether or not directly to the public and whether or not the person’s provision of such legal services is regulated).*
49. In the CMA Response to Scottish Government consultation on this matter,³⁵ the CMA suggested a balanced approach should be taken when defining legal services so that it is not so narrow as to fail to capture a sufficient range of legal services and providers that are a risk to consumers, but equally, not so wide that it imposes disproportionate and unnecessary obligations on providers.
50. The CMA welcomes the definition that retains the scope of legal services covered and extends the scope of legal regulation beyond the traditional practitioners. The definition will include solicitors and advocates as well as in-house lawyers, paralegals and conveyancing practitioners. It also includes bodies providing legal services such as traditional legal partnerships, other forms of legal business and licensed legal services providers.
51. **Unregulated legal services** – The CMA welcomes the inclusion, at section 65 of the Bill, for a register of unregulated legal service providers to be created by (the redesignated) Scottish Legal Services Commission.

³⁵ [CMA response to the Scottish Government consultation on legal services regulation in Scotland, paragraphs 33-34.](#)

52. Following a review of the Legal Services Market Study in England and Wales in 2020³⁶ the CMA supported the creation of a mandatory register for unauthorised legal services providers and suggested that it be created or supported by the Ministry of Justice. (This supported earlier calls made in a separate independent report into the legal services sector³⁷).
53. The CMA believes the benefits from this are a greater evidential base of the unregulated sector and an improved understanding of issues such as complaints and areas requiring reform. The CMA also proposed this would assist in creating a better framework for consumer redress and be a positive move towards proportionate ‘regulation’ of the unregulated sector.
54. However, the CMA concluded that the register should be mandatory on the basis that there is unlikely to be a significant uptake in registrations where it is not seen as beneficial to the business. From the CMA experience during the Market Study, it was found that consumers were generally unaware of quality marks and that fact may detract from the market value businesses would see from agreeing to be part of any voluntary registration scheme. Accordingly, while welcoming of the plans for the creation of a register in the Bill, the CMA has concerns about its success if registration remains on a voluntary basis.³⁸
55. **Legal tech** – The CMA notes the provisions in sections 21 to 24 of the Bill that set out that a regulator (or an approved regulator for licensed providers) may, on the application of a legal services provider who is subject to rules of the regulator, direct that a rule or rules do not apply or may be modified to the legal services provider in circumstances where such a direction is desirable for the purposes of enabling a new or alternative way of providing or regulating a services to be piloted.
56. In the CMA Response to Scottish Government consultation, the CMA noted the growth in the use of technology in legal services and the significant potential for legal tech to create innovations and transform how legal services are provided. The CMA also noted the finding in the Robertson Report that the current regulatory system was not sufficiently able to support a forward-looking, dynamic and innovative legal services sector. The CMA observed that a regulatory model should be activity and risk-based, flexible, and

³⁶ [Final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

³⁷ [IRLSR Final Report.docx \(ucl.ac.uk\)](https://www.ucl.ac.uk)

³⁸ *In July 2023 the CMA launched an investigation to protect consumers following concerns about unfair practices in certain unregulated services such as will-writing, online divorce and pre-paid probate services. [CMA investigates will-writing and other legal services - GOV.UK \(www.gov.uk\)](https://www.gov.uk) This work is separate from the previous market study work into legal services in England and Wales.*

proportionate and be able to respond to changes in the sector over time such as the development in new types of services and providers. However, it also noted the potential for risk, particularly when legal tech providers are unregulated. The CMA therefore encouraged the Scottish Government to carry out work proactively to consider how to achieve the right balance between facilitating innovation and protecting consumers through regulatory requirements.³⁹

57. The CMA recommends that one aspect of achieving that balance might be consideration of a mandatory public register for unauthorised providers (see comments above).
58. The approach proposed in the Bill, which permits waivers to allow a regulatory sandbox to test out innovations under the regulator's oversight, may provide the flexibility for which the Robertson Report and the CMA both advocated, provided that it is used to achieve the balance (referred to above) between facilitating innovation while ensuring adequate consumer protection.

³⁹ *CMA response to the Scottish Government consultation on legal services regulation in Scotland, paragraphs 24-30.*