The Committee will meet at 10.00 am in Committee Room 1 to consider the following agenda items:

1. **Legal Profession and Legal Aid (Scotland) Bill**: The Committee will take evidence on the Financial Memorandum from—

   Chris Graham, Team Leader, Access to Advice; Louise Miller, Legal Profession and Legal Aid (Scotland) Bill Co-ordinator; Mike West, Team Leader, Legal Services Team; and Elaine Hamilton, Legal Services Team, Scottish Executive.

2. **Tourist Boards (Scotland) Bill**: The Committee will take evidence on the Financial Memorandum from—

   John Brown, Head of Tourism Policy, Scottish Executive.

3. **Accountability and Governance inquiry**: The Committee will consider its informal seminar.

4. **Items in private**: The Committee will decide whether to consider its draft report on the Financial Memorandum of the Criminal Proceedings etc. (Reform) (Scotland) Bill and a paper from the Committee’s adviser on the review of Scottish Executive management of public finances in private at its next meeting.

5. **Accountability and Governance inquiry (in private)**: The Committee will consider potential witnesses for its Accountability and Governance inquiry.

Susan Duffy  
Clerk to the Committee  
Room T3.60  
Extn 85215
The papers for this meeting are:

**Agenda Item 1**

Submissions from:
- The Faculty of Advocates;
- Scottish Legal Aid Board (SLAB); and
- The Law Society of Scotland.

PRIVATE PAPER

*Legal Profession and Legal Aid (Scotland) Bill* (previously circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

*SPICe Briefings* (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

**Agenda Item 2**

Submissions from
- COSLA; and
- VisitScotland.

PRIVATE PAPER

*Tourist Boards (Scotland) Bill* (previously circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

*SPICe Briefing* (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

**Agenda Item 5**

PRIVATE PAPER

*Submissions to the inquiry* (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)
Finance Committee

12th Meeting 2006 – Tuesday 25 April 2006

Scrutiny of Financial Memorandum – Evidence on the Legal Profession and Legal Aid (Scotland) Bill

1. The Legal Profession and Legal Aid (Scotland) Bill ("the Bill") was introduced to Parliament on 1 March 2006. The Justice 2 Committee has been designated the lead committee for the Bill at Stage 1.

2. The Finance Committee agreed at its meeting on 14 March 2006 to adopt a level 2 approach to its scrutiny of the Bill. Specifically, the Committee agreed to issue its standard questionnaire to potentially affected organisations and take oral evidence from Scottish Executive officials at its meeting on 25 April 2006.

3. The following submissions have been received so far and these are attached:

- Faculty of Advocates;
- Scottish Legal Aid Board (SLAB); and
- The Law Society of Scotland.

Kristin Mitchell
Assistant Clerk
Submission from the Faculty of Advocates

Introduction
1. The Faculty of Advocates is pleased to have the opportunity to submit observations on the Financial Memorandum accompanying the Legal Profession and Legal Aid (Scotland) Bill. The Bill has two main components: changes to the system for dealing with complaints against members of the legal professions, and secondly a number of changes to the delivery of publicly funded legal advice. The Faculty is in a position comment on the financial implications of the first part but we do not feel able to offer any useful comment about the financial aspects of the second part.

2. Before responding to the specific questions posed in the Finance Committee’s letter of 14th March 2006, it may assist if we set out some factual background about the structure of the legal professions. In our view, this bears very directly on the way in which regulatory scheme proposed by the Bill will operate and where the costs of regulation will fall.

3. There are significant differences between the practice of advocacy on a self-employed referral basis and other forms of legal practice. These differences have regulatory implications which are reflected in the regulatory structures of the two branches of the legal profession. The work carried out by advocates differs from that done by solicitors. Advocates do not handle clients’ money and therefore do not require to have Accounts Rules or a Guarantee Fund. They function as an independent referral bar. They give advice and they appear in court. All advocates are self-employed and so far as their professional instructions are concerned are in competition with each other. They are however part of a collegiate body. They are all members of the Faculty of Advocates and as such are subject to the code of conduct of that organisation, and individual advocates are the beneficiaries of the advice and guidance which has always been provided by members to each other. In particular senior members have a duty to assist junior members on questions of professional ethics. We would not be in favour of a system which allowed individual advocates to deal with complaints made about him or her directly with the client. All members of the Faculty of Advocates have an interest in maintaining standards and, through the office bearers, in knowing of all complaints. Members against whom a complaint is made take the matter very seriously. A finding against a member is important. Any decision that a member has been guilty of misconduct or has provided inadequate service will have serious consequences for him or her. It is essential that such decisions are made by people who are knowledgeable about the profession, and whose decisions command respect of both the person who is dissatisfied and the member of the profession.
4. The Faculty of Advocates operates in a significantly different way from the Bar in England and Wales. It is library based. There are no chambers. Entrance to the Faculty depends on appropriate qualification and completion of training and is not dependent on obtaining a seat in chambers. The cost of dealing with complaints is borne entirely by members. There is no cost to the taxpayer. The members of Faculty and lay members who make up the complaints committees do so at no cost, and all administrative costs are paid by the Faculty. The number of complaints against advocates is very small. In 2004 the Faculty received 52 complaints, of which 5 could not be taken forward. The remaining 47 were investigated and of those, 29 may be characterised as service complaints, 17 as conduct complaints and one as involving elements of both conduct and service. 32 of those complaints have been dismissed.

In 2005, the Faculty received 49 complaints, two of which could not be taken forward. The remaining 47 were investigated, of which 22 may be characterised as service complaints, 20 as conduct complaints and five as involving elements of both conduct and service. 28 of those complaints have been dismissed.

Questions

Qu 1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

5. The Faculty submitted a written response to the Executive’s consultation paper on changes to the system for dealing with complaints against members of the legal professions which preceded the Bill. That consultation paper had no specific financial assumptions section. The Faculty is also submitting a written memorandum to the Justice 2 Committee, which is the lead committee of the Scottish Parliament for the Bill. There has been no other separate pre-Bill consultation.

Qu 2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

6. This is not applicable for the reasons given in paragraph 6.

Qu 3. Did you have sufficient time to contribute to the consultation exercise?

7. This is not applicable for the reasons given in paragraph 6.

Qu 4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

8. Despite the Executive’s confident assertions at paragraph 109 of the Financial Memorandum, the Faculty does not anticipate any cost
savings to the organisation as a body. On the other hand, there will be financial consequences of the Bill for all practising members of the Faculty. For some of those practitioners, who are all self-employed sole practitioners, these may be significant.

9. We anticipate that there will be no cost saving to the Faculty for several reasons. First, as noted above, the members of Faculty and lay members who make up the existing complaints committees do so at no cost to the public. Secondly, the administrative support for the existing complaints process is provided by members of the Faculty secretariat, who are employed for a number of tasks, of which complaints administration is but one. Thirdly about half the complaints to the Faculty are conduct complaints, which will continue to be referred to the Faculty under the proposals in the Bill. There will, we anticipate, be additional costs in liaising between the Faculty and the Commission.

10. Individual practitioners will have the proposed levies imposed on them to fund the operation of the Scottish Legal Complaints Commission. According to the Law Society of Scotland Annual Report for 2005, there are 10,233 practising solicitors; while there are currently 461 practising advocates. As the Executive will not fund the Commission after the first year of operations (see paragraph 109 of the Financial Memorandum), that cost will be borne entirely by the professions. It is reasonable to expect that the cost will be passed on to the public in the form of increased fees – something which is not canvassed in the Financial Memorandum. We note the proposal that compensation of up to £20,000 may be awarded. All advocates have personal indemnity insurance for which they pay. The insurers have indicated that they will require to consider their position in providing cover in respect of the proposed arrangements. They may introduce an excess and they may increase premiums.

Qu 5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

11. For the reasons discussed in paragraph 9, we do not consider that there is any alteration in the costs to be borne by the Faculty as an organisation. However, for the reasons given in paragraph 10 there will be costs on individual members. We have elaborated on the consequences there.

Qu 6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

12. For the reasons discussed in paragraph 9, we do not consider that there is any alteration in the costs to be borne by the Faculty as an organisation. However, for the reasons given in paragraph 10 there will
be costs on individual members. We have elaborated on the consequences there.

Qu 7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

13. According to paragraph 2 of the Policy Memorandum accompanying the Bill, those elements of the Bill relating to legal aid form part of a larger policy initiative. We surmise that is a reference to the Strategic Review of the Delivery of Legal Aid, which reported to the Ministers in June 2004. The Faculty is not in a position to comment on the overall financial consequences of that policy.

Qu 8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

14. There will almost certainly be additional costs associated with the complaints handling part of the Bill. As paragraph 112 of the Financial Memorandum makes clear, the figures set out in the Memorandum for the operating costs of the proposed scheme are estimates; and the structure and methods of working will be a matter for the Scottish Legal Complaints Commission, if it is established. Compared with the existing structure for regulation of advocates, the Faculty anticipates that the Commission will be less efficient, certainly in the initial years of its existence. Further, we consider it reasonable to regard the Scottish Ministers’ cost estimates as under-estimates. It is anticipated that there will be nine Commissioners with 50-60 employees. Under the present system, the work of investigating and determining complaints against advocates is currently carried out by the Dean, Complaints Committees, Investigating Committees and the Disciplinary Tribunal. The advocate members of these bodies provide their services free of charge. Administrative support is provided by two employees of the Faculty. As we understand it, much of the work of the Law Society in handling complaints against solicitors is likewise carried out by reporters and Client Relations Committees, the members of which are not remunerated. According to the report of the Law Society’s Client Relations Department for 2005, 38 staff are employed in that Department. Assuming that the Executive’s projections are correct, there will be more persons paid for handling complaints against lawyers than is the case at present. We would be surprised if the voluntary work which is currently put into the current system would be replaced by between 10 and 20 additional employees. Further, as we have observed above, we do not anticipate that the Faculty will save costs. Indeed there may be additional costs in liaison between the Faculty and the proposed Commission in connexion with cases where there is an issue as to whether or not the complaint involves a conduct element. There will therefore be a direct cost to practising members of Faculty, which it is reasonable to expect will be passed on to members
of the public in the form of increased fees. It is not possible to quantify that increase directly.

15. Paragraph 140 suggests that the Commission may “disseminat[e] best practice on complaints handling etc by publication of leaflets and information packs.” The Faculty anticipates that such ‘best practice’ may well result in additional administrative burdens on individual members. That would lead to additional costs, in the form of inefficiency in the management of advocates’ individual businesses, and, to the extent that members of Faculty may require to retain secretarial or archival services, in a direct on-cost, which it again reasonable to expect will be passed on to members of the public in the form of increased fees. Again it is not possible to quantify that increase directly.

16. More generally, the Faculty does not accept that the proposal will be cost-neutral. It is likely that the arrangements will be more expensive than the aggregate costs of the present arrangements. One likely effect of the proposal is therefore to increase the cost of legal services in Scotland. The aggregate cost of the proposed system is likely to be greater than the aggregate cost of the present arrangements. If the cost is, as proposed, to be borne in the first instance by the legal profession, it is likely to be passed on to clients in the shape of higher fees.

17. It is anticipated that, in addition to nine Commissioners, the Commission will employ 50-60 members of staff. This is more than the number of employees currently employed in the Law Society Client Relations Department, to which one may add the two members of staff employed by the Faculty who are involved in the administration of complaints. Yet the Commission will only handle pure service complaints. The Faculty will require to maintain the present arrangements for misconduct complaints and one imagines that the Law Society will need to do likewise. The overall number of people involved in dealing with complaints against lawyers will increase. The additional administrative costs will require to be met. There will, further, be additional handling costs (both for the Commission and the professional bodies) in sorting out whether complaints are service complaints or conduct complaints and in liaison between the Commission and the professional bodies. These additional handling costs will also require to be met.
Submission from Scottish Legal Aid Board (SLAB)

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SLAB responded to the consultation – ‘Advice for All: Publicly Funded Legal Assistance in Scotland – The Way Forward’. There were no financial assumptions made. The consultation concerned policy matters only.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

4.1 The Scottish Executive sought views from SLAB on elements of the Bill and we gave comments. The costs we identified are not specifically included in the Financial Memorandum.

4.2 Legal Aid Fund - We agree with the Scottish Executive that in some areas it is very difficult to estimate the cost implications of the Bill, particularly in relation to registered advisers, as the likely number of advisers who will register and the likely volume of applications are both unknown. Any increase in costs to the legal aid fund will depend on the number of registered advisers and the volume of applications. In relation to the transfer of grants of solemn legal aid to the Board, it is difficult to be clear as to the impact the transfer will have on the legal aid fund. However, the ability for the Board to verify financial information provided in applications may lead to termination and possible recovery of legal aid where the information is found to be false.

4.2 Grant-in-Aid - The provisions relating to the creation and maintenance of a register of advisers and a Code of Practice will lead to administrative costs for SLAB. The costs will depend on the number of registered advisers and the approach to the Code of Practice, particularly how compliance is monitored. The range of costs is estimated to be £50,000 - £120,000. The transfer of grants of solemn legal aid will also lead to some administrative costs for the Board. The estimated grant-in-aid costs of the Bill provisions are detailed in Appendix 1 (Costs & savings table).
1.3 At paragraph 147, the Financial Memorandum explains the process of granting civil legal aid instead of civil advice and assistance. Under advice and assistance, if a solicitor wishes to carry out work beyond the authorised limit of expenditure, they must seek an increase in expenditure from the Board. Costs are controlled in this way.

1.4 In relation to complaints against the legal profession, the Board advised the Scottish Executive in our response to the consultation on the Regulation of the Legal Profession, that advice and assistance would be available for those wishing to pursue a complaint. Those wishing to judicially review a decision of the new body will be able to apply for civil legal aid. We do not expect any material financial impact as a result of such applications.

5. **Are you content that your organisation can meet the financial costs associated with the Bill. If not, how do you think these costs should be met?**

Additional grant-in-aid (which funds our administrative and staffing costs) will be required to meet the administrative costs associated with the provisions in the Bill. (See costs outlined in Appendix 1.) As the Legal Aid Fund is not cash limited, any increase in legal aid costs will be provided by the Scottish Executive.

6. **Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

The effect on the Board’s grant-in-aid and the costs to the legal aid fund are dependent on the number of registered advisers and organisations willing to participate, the auditing requirements for the Code of Practice and the volume of applications.

7. **If the Bill is part of a wider policy initiative, do you believe that these associated costs area accurately reflected in the Financial Memorandum?**

The Bill is part of a wider reform agenda but we are not aware of any other costs directly related to the Financial Memorandum.

8. **Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?**

SLAB is not aware of other legal aid costs associated with this Bill.
## Appendix

<table>
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<th>GRANT IN AID</th>
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<th>Set up costs</th>
<th>On going costs</th>
<th>Savings</th>
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<td><strong>TOTAL</strong></td>
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<td><strong>£135,500 - £205,500</strong></td>
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<th>Set up costs</th>
<th>On going costs</th>
<th>Savings</th>
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<td>Part 4 – Section 46</td>
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<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>£35,000</strong></td>
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Submission from the Law Society of Scotland

I refer to your letter of 14th March inviting the Law Society of Scotland to submit comments to a number of questions raised by the Finance Committee. Please find attached a Memorandum of Comments prepared by the Society which I trust you will find of assistance.

I also enclose a paper by Professor David McCrone which also deals with issues relating to the Financial Memorandum.

If you have any queries, please do not hesitate to contact me.

Yours sincerely,

Michael P. Clancy
Director

INTRODUCTION

The Law Society of Scotland (the Society) thanks the Finance Committee for the invitation to comment on the Financial Memorandum in relation to this Bill and has the following comments to make.

Consultation

Question 1 – Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes – a copy of the response to “Reforming Complaints Handling, Building Consumer Confidence: Regulation of the Legal Profession in Scotland” is attached to this Memorandum. [The Appendices can be provided if required.]

Question 2 – Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

No. The Society does not believe that its comments have been accurately reflected as the Memorandum lacks any substantive detail or any proper calculation of the annual or specific levies which will fund the Scottish Legal Complaints Commission (SLCC). The Society also wishes to state that it sees no justification whatsoever for the State not inputting into this new organisation financially. By the Society’s computations the Executive will be saving approximately £400,000 per annum in decommissioning the office of the Scottish Legal Services Ombudsman and this is funding which should be applied directly to the new Commission covering amongst other things the cost and expenses of the Board which is to take over certain functions previously fulfilled by the Ombudsman. Whilst there may be some marginal justification for the Profession bearing a general levy in case costs a good number of the fixed costs must lie with the State.

* this is available from the clerks on request
In paragraph 109 of the Memorandum the Executive estimates running costs of £2.4 million. On what conceivable basis?

The Memorandum talks about an annual levy from 10,000 practising legal practitioners. Leaving aside non-lawyers with rights of audience about to be introduced of which there are hardly likely to be many and the three independent Qualified Conveyancers which the Society regulates and leaving to one side the imposition on approximately 500 practising advocates the vast burden of expenditure in relation to this almost entirely unaccountable body is going to be met by Scotland’s 10,000 solicitors. The Society believes that there is a lack of understanding as to the nature of various categories of practising certificate holder and the status of solicitors on the roll. What consideration has been given in relation to the Memorandum as to whether or not the general levy should apply to every solicitor – trainees, assistants, associates, junior partners, senior partners and in particular the 2,700 or thereby lawyers who do not work in private practice?

The estimates of £120 for the general levy and £300 for the specific levy are accordingly meaningless and not based on any proper consideration of the structure of the legal profession in Scotland.

The specific levy, were it to be imposed in circumstances where a solicitor was exonerated may be illegal – a matter which the Society has already brought to the Executive’s attention – and accordingly it is entirely unsafe to calculate on this basis. The Society’s current expenditure in relation to the Client Relations Office is:

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006 Budget</th>
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<tbody>
<tr>
<td>Salaries</td>
<td>389,159</td>
<td>452,940</td>
<td>503,011</td>
<td>632,763</td>
<td>774,323</td>
<td>979,401</td>
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<td>Overheads</td>
<td>97,715</td>
<td>123,471</td>
<td>130,682</td>
<td>166,543</td>
<td>175,484</td>
<td>254,644</td>
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<td>Operational Costs</td>
<td>89,972</td>
<td>101,260</td>
<td>123,777</td>
<td>152,367</td>
<td>273,408</td>
<td>436,298</td>
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<tr>
<td>Prosecution Fees</td>
<td>225,709</td>
<td>103,174</td>
<td>165,392</td>
<td>149,426</td>
<td>109,589</td>
<td>177,362</td>
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<td>Tribunal Costs</td>
<td>92,077</td>
<td>101,738</td>
<td>96,362</td>
<td>96,620</td>
<td>117,510</td>
<td>104,362</td>
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<tr>
<td>Recoveries</td>
<td>48,299</td>
<td>30,436</td>
<td>68,504</td>
<td>65,177</td>
<td>61,514</td>
<td>60,087</td>
<td>67,000</td>
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<td>Total Costs</td>
<td>846,333</td>
<td>852,147</td>
<td>950,720</td>
<td>1,132,542</td>
<td>1,388,800</td>
<td>1,891,978</td>
<td>2,089,160</td>
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<td>Percentage</td>
<td>17%</td>
<td>1%</td>
<td>12%</td>
<td>19%</td>
<td>23%</td>
<td>36%</td>
<td>10%</td>
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</table>

This level of expenditure relates to approximately 36 members of staff in that office consisting of 20 professional and 16 support staff. The point however is that the bulk of the work done in relation to the Society’s handling of service complaints is carried out by 12 Client Relations Committees underpinned by 254 reporters of whom 168 are solicitors and 86 are non-solicitors. The Society has stressed in its response to the consultation that the decision-making in relation to service complaints is that all stages of the operation are
50% solicitor and 50% lay. Those preparing reports and attending Committee meetings are paid a nominal fee but give their services on a voluntary basis. The new body will not be able to rely on a similar input.

The Society’s expenditure therefore of approximately £2.1 million per annum is understated by arguably a further £1 million by way of “goodwill subsidy”.

Until such time as the Executive makes it clear the operational modus of the new body it is difficult to see whether or not this system is to replicated but there is no doubt that even if it were there may be no question of the profession inputting into a system voluntarily for the good of the profession and the public and accordingly the cost would rise considerably. Similarly if as anticipated by the Society the SLCC operates without Committees and purely on a Case Manager basis then there will be more direct salary cost.

**Question 3 – Did you have sufficient time to contribute to the consultation exercise?**

Yes.

**Question 4 – If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.**

The Society wishes to make it clear that there are two sets of implications here. Firstly, for the Society as an organisation: the implications are that there may be redundancies perhaps up to 12 if the Society is scaling down its Client Relations operation and concentrating on conduct work but it is impossible to say what scale those might be on until such time as more detail is known about the Commission and its proposed method of working. There have been some suggestions that TUPE may apply but until such time as the Executive tells us where the new organisation is to be situated this remains uncertain.

Secondly, the principle implications are for the practising profession. Whilst the Society has several philosophical difficulties with the Bill based on its ending of the independence of the legal profession and the danger that that presents the public in Scotland, this Memorandum is confined to the financial considerations. First of all it is entirely proper that the State should bear in their entirety the set up costs. The change in Scotland has not been predicated on the systemic failure of the client complaints system unlike its English counterpart. Whilst therefore it is not a matter of direct concern to the Society it does observe in passing that the estimates in relation to, for instance, recruitment and training do appear to be without any foundation and somewhat aspirational. In particular £40,000 for training for 50-60 staff with, in all probability, virtually no background in this area of work is, at best, hugely optimistic.

The Society is also not in a position to comment in any way on the accommodation costs. The cost of premises in Edinburgh or indeed Glasgow
is likely to be exponential compared to other areas in which this Commission should more properly be situated. That being so, until such time as the Society is told where the situation is to be it would require to reserve its position on this. Again the Society’s reservations in relation to the IT costs and publicity campaign expenditure and would reiterate its desire to engage meaningfully with the Executive when decisions have been made.

The Society therefore turns to the question of costs on the legal profession. In relation to recruitment the Society would strongly counsel the Executive to consider their premise that “no provision is made for recruitment costs in the immediate subsequent years”. This is a dangerous assumption. Working in the Society’s Client Relations Office is stressful characterised as it is by often having to deal with difficult complainers and indeed it must be said, difficult solicitors. Staff turnover is much higher than in any other area of Society function and it is likely that this experience will be replicated in the Commission perhaps more so when the Case Managers are the sole decision makers whereas as least the Case Managers have not only many years of experience collectively to draw on but the advantage of bearing the burden with reporters and Committees and Conveners. On what basis does the Executive consider that turnover will be marginal?

Estimated salary costs again are meaningless until such time as the Executive sets out the mode of operation although again we would counsel that the 15% allowance for National Insurance and Pension contributions does seem to be worryingly low. More specification is required on the breakdown of 50-60 staff and a note of the remuneration levels for the 9 Board members including the Chairman before the Society would be able to comment in any meaningful way whatsoever.

Again, on paragraph 135 the Society considers it optimistic to say the least that the organisation will be fully functional within three months of its inception and it is really not possible for the Society to comment on any of the assumptions made at paragraphs 136, 137, 138, 139 and 140 unless information of the Executive’s thinking and decision-making in this regard was made available.

Question 5 – Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As indicated, the costs are not going to fall on the Society as a body but on the profession. The costs lack specification and foundation but that they are likely, particularly with what the Executive has styled a “polluter pays” system, to impact markedly on the high street of Scotland – the very area of practice which is under most financial pressure. The current proposals wrongly suggest “polluter pays” because solicitors will pay a case fee as the Bill stands to prove their innocence.
Question 6 – Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No.

Question 7 – If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No.

Question 8 – Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The Society believes that there may be future costs. For example, the Bill provides Scottish Ministers with many additional powers to make substantive changes in the composition of the Board, the area of reach of this organisation and other matters all of which would have major cost implications. The Society also believes that at present the costs whilst they have been quantified as far as they possibly can by the Executive remain at best a “guesstimate”. It also appears that no consideration has been given to the costs that may be incurred at start-up of an ongoing nature in relation to obtaining legal advice for handling complaints or dealing with challenges before the Courts. These costs could be substantial yet are not mentioned other than a suggestion that £20,000 should be allowed for consultancy and the possibility of an in-house legal team. These omissions go to emphasise the vague and unspecific nature of the approach in the Memorandum.

The Society stresses its willingness to be involved in a more meaningful consultation when matters have been developed.
THE GOVERNANCE OF LAW:

LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL

This report is divided into six parts:

1. Why regulatory bodies (including ‘quangos’ and NDPBs) have become more numerous and salient in contemporary social and political life in Scotland;


3. An analysis of the report on written consultation responses to the Scottish Executive’s document ‘Reforming Complaints Handling: building consumer confidence’;

4. Observations on the Legal Profession and Legal Aid Bill;

5. A review of regulatory procedures with regard to comparator professions, viz., ICAS, GTC, GMC, and Financial Ombudsman Service;

6. General observations resulting from the analysis.

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1.0 REGULATORY BODIES

1.1 Recent years have seen a major growth in supervisory and regulatory bodies governing both public and private sectors. This in part reflects a process of de-regulation and privatisation of public bodies, while at the same time recognising that there is a need for public accountability and regulation in the public interest. Hence, there has been a growth in regulators and ombudsmen.
1.2 As a consequence, there has been awakened interest in ‘quangos’ and
NDPBs (non-departmental public bodies), who gets appointed to them,
and what their remit is. In his review of quangos in Scotland shortly after
the Scottish parliament was established in 1999, Richard Parry observed:

‘Quangos represent a cluttering of the political landscape, with potentially
redundant decision layers. These will be decreasingly acceptable now
that a straightforward central government model of parliamentarians and
ministers is available in Scotland. Delayering is all the fashion in private
business, and structures that build in second-guessing or duplication of
decisions are managerially dubious’ (Parry, 1999:25).

It is possible that Parry was too sanguine in his views of the impact of
devolution, and in any case, the evidence in the UK as a whole, is that
the ‘quango state’ is alive and all too well south of the border (Select
Committee on Public Administration, Mapping the Quango State, HC
367, 2000-1). Coined by the Piattsky Report on Non-Departmental
Public Bodies in 1980, the Cabinet Office defined it in the following way:

‘A quango is officially defined as a body which has a role in the
processes of national Government, but is not a government department
or part of one, and which accordingly operates to a greater or lesser
extent at arm’s length fro ministers. More simply, this means a national
or regional public body, operating independently of Ministers, but for
which Ministers are ultimately responsible. Such bodies are formally
classified as NDPBs – or non-departmental public bodies.’ (Cabinet

A matrix of NDPBs as they relate to Scotland is to be found at the end of
this section (‘A Guide to NDPBs’).

1.3 In a Scottish context, the increasing number of regulators,
commissioners and ‘tsars’ has drawn political and media attention. (The
Conservative MSP Bill Aitken waspishly commented that Scotland now
has more tsars than the Romanoff dynasty.) The Scottish Parliament’s
Finance Committee recently (March 2006) announced its intention to
carry out a review of such bodies, and whether they are value for money
(‘Accountability and Governance Inquiry’). Regulatory bodies
accountable to parliament include: Audit Scotland, Scottish Public
Services Ombudsman, the Commissioner for Children and Young
People, Commissioner for Public Appointments in Scotland. Those
accountable to Scottish Ministers include: Scottish Information
Commissioner, Office of the Scottish Charity Regulator, Scottish
Commission of the Regulation of Care, and Standards Commission for
Scotland.

1.4 The Better Regulation Task Force which was set up in 1997 estimated
that the cost to the UK economy of regulation is between 10-12% of
GDP, over £100bn, similar to annual income tax returns (Better
Regulation, annual report, 2005). In its March 2005 report to the Prime Minister, ‘Regulation – Less is More’, BRTF identified ‘regulatory creep’ whereby over-zealous interpretation by government leads to red tape. BRTF argued for greater clarity, consistency and better communication. It commented: ‘One of the most unfortunate things about administrative burdens is that those imposing them often do not think about or cannot see the true costs which they are imposing on others.’ (BRTF, 2005, p.3)

It commended to government the principle of ‘one in, one out’ whereby new regulations have to be matched by deregulatory measures. Its report had five recommendations to government:

- Government should be more proactive in seeking out proposals for simplification;
- It should adopt a ‘one in, one out’ approach to regulation;
- Departments and regulators should undertake more frequent and better post-implementation reviews of regulation;
- Government should set up effective and efficient mechanisms to deliver regulatory reform;
- Business and other stakeholders should also identify redundant or over-burdensome regulation.

1.4.1 In its evidence to the Clementi Commission (June 2004), BRTF rejected the setting up of an overarching regulator, the Legal Services Authority (LSA) on the grounds that professional responsibility would be undermined if the legal profession were entirely disengaged from the process of making the rules which govern it. It commended ‘model B+’ on the grounds that it would split regulatory and representative functions. In January 2006, BRTF became the Better Regulation Commission (BRC). It is committed to the ‘fit for purpose’ principle whereby regulatory devices should be appropriate to the task at hand, and should have built-in safeguards to prevent escalating costs.

1.4.2 The UK government cited the Better Regulation Action Plan of 2005 in support of its Legislative and Regulatory Reform Bill (January 2006) ‘to make it quicker and easier to tackle unnecessary and over-complicated regulation and help bring about a risk-based approach to regulation’, and in the context of the Better Regulation Commission’s five principles of good regulation (Cabinet Office News Release, 11th January 2006).

2.0 THE CLEMENTI REPORT AND THE WHITE PAPER (England and Wales)

2.1 Appointments:

2.1.1 Clementi argued that the appointment of Chairman and Chief Executive of the Legal Services Board (LSB) would lie between the Secretary of State for Constitutional Affairs and the Judiciary. On the one hand, the Board needs to be free from political influence; and on other, the Secretary of State is responsible to parliament for the conduct of legal services sector. Clementi concluded: ‘The proposal of this Review is that the appointment of the Chairman and Chief Executive should be made by the Secretary of State for Constitutional Affairs in consultation with a
senior member of the judiciary [Clementi suggested the Master of Rolls'] (p.83, para. 13).

2.1.2 The White Paper opted to have Secretary of State for Constitutional Affairs appoint the Chairman, as well as members of LSB ‘following consultation with the chair’ (p.32, 5.5). The LSB would appoint the chair of OLC ‘subject to the approval of the Secretary of State for Constitutional Affairs. Members of the OLC board would be appointed by LSB, without approval of the Secretary of State for Constitutional Affairs. Appointments to be subject to ‘Nolan’ rules (Office of the Commissioner for Public Appointments).

2.2 Costs:
2.2.1 Clementi employed Ernst and Young who argued that best estimate of cost of model B+ in a simplified system (England and Wales as much more complex than Scotland) at £50.5m, including additional cost of new legal services board at £4.5m. Costs would be covered by general levy across front-line regulatory bodies; and payments from those against whom complaint is upheld (‘polluter pays’ principle).

2.2.2 The White Paper argued that costs are borne by legal profession; by LSB charging FLRs (front-line regulators) for costs of regulation. Funding of OLC on 30% from general levy on profession, and 70% from ‘polluter pays’ mechanism.

2.3 The White Paper argued for high level salience of a Consumer Panel (its White Paper is called ‘The Future of Legal Services: Putting Consumers First’), with major sections given over to discussion of Alternative Business Structures (ABS) whereby multi-disciplinary partnerships including non-lawyers are involved. Clementi devoted a chapter to this but seemed less focused on this, as indeed does the Scottish draft bill.

2.4 Issue as to who controls Guarantee Fund and Master Policy: in the England and Wales White Paper, there is some discussion of their equivalents coming under the jurisdiction of Financial Ombudsman Service (FOS) which itself comes under FSA (Financial Services Agency). I noted that Law Society of Scotland (LSS) made this point too, arguing that it is already answerable in this regard to FSA/FOS, and that there is no role for Scottish Legal Services Ombudsman in overseeing the Master Policy. Indeed, OFT investigated the Master Policy in 2004-5, and had no adverse comments to make.

3.0 REFORMING COMPLAINTS HANDLING, BUILDING CONSUMER CONFIDENCE: ANALYSIS OF WRITTEN CONSULTATION RESPONSES

3.1 The Scottish Executive was reportedly pleased (a) that 490 responses were received to this consultation, second in number only to its consultation proposing the ban on smoking in public places; and (b) that
these appeared to support its stance on reforming complaints procedures.

3.2 The analysis and reporting of these responses conform to a recognisable genre for those familiar with similar consultation exercises, namely, taking each of the questions/headings in the original document, and sorting responses into these, normally adding them up in terms of being for and against (with percentages), supplemented by the use of selected quotations from written submissions. This descriptive exercise is usually described as ‘analysis’, but does not involve any or much data manipulation using quantitative or qualitative techniques.

3.3 The analysis here has been carried out by Linda Nicholson, described as The Research Shop, based in Peebles, possibly a one-person outfit, of which there are a few who take on this kind of consultancy work devoted to analysing consultation responses for government and the public sector. According to web searches, The Research Shop has carried out similar work in Scotland on, for example, dental services, NHS pharmacy services, family law, the Sentencing Commission, and organ and tissue donations. This kind of work is possibly best described as ‘cheap and cheerful’, which is not meant to be pejorative, but simply to indicate that it is not especially sophisticated or nuanced, if only because the budgets involved are quite modest and the time-scales very tight. There are some freelance consultants who make a living in this way by doing such work for the Scottish Executive.

3.4 In the case of this report, it has many of the deficits as well as some merits. One cannot say that it has skewed the findings, but one is left with doubts about the methodology which is largely superficial, and sometimes misleading. For example:

3.4.1 Small numbers: there is over-dependence on percentages, even where the Ns are very small. For example, see page 36, table 4: percentages are given for an N of 31, which means that every single person represents three percentage points. It is not sensible to do this.

3.4.2 Base numbers: Even where the Ns are of a reasonable size (100+), everything depends on the base, that is, what it is a percentage of. This can make all the difference to a conclusion. For example, much is made of the fact that 81% of members of the public support the government’s preferred option D. These number 417, the largest group of those responding to the consultation. It turns out, however, that only 107 members of the public actually expressed a view on this, and of these 81% support option D. In other words, the 81% calculation is based on 107 cases, not 417. One might just as well have written: ‘Only 25% of members of the public supported the government’s preferred option D’. One might, of course, be accused of choosing a statistic which fitted one’s case, but the far more important point is that we have to be careful and transparent about the figures percentages are calculated upon. To take another example: in the executive summary, in answer to question
1, bullet point one says: ‘The majority view (84%) was opposed to the legal professional bodies keeping their regulatory and representative functions undivided.’ Taken at face value, we might conclude that well over 8 out of 10 people making written submissions wanted the functions to be split. Not so. Turning to page 22, one discovers that ‘In total, 216 respondents (44%) provided a clear view on whether the regulation and representation functions of the Law Society of Scotland should remain undivided.’ In other words, it is 84% of this 44% who take this view, not 84% of members of the public responding, still less of the total number who sent in written submissions. In short, the headline statement on page 2 could well have been written as: ‘42% of members of the public were opposed to the legal professional bodies keeping their regulatory and representative functions undivided.’ If one wanted to be devious, one might point out that a clear majority (58%) were quite happy with these functions NOT being divided.

3.5 Let us examine the methodology more carefully. On page 15, the report says the following:

‘The majority of responses from members of the public were from people who had requested that the Law Society investigate their complaint against their solicitor. However, there were indications that a small minority of submissions from the public were from people who are currently, or have been involved in the complaints handling process, for example, as lay representatives on a Law Society Committee, or as reporters for the Law Society. Other people declared their interest, including retired police officers, expert witnesses, and previous Citizens Advice Bureaux staff.’ (p.16)

This is an important paragraph because it points to a significantly varied and diverse category of ‘the public’. From the first sentence, one assumes that the researcher has been able to identify complainants however narrowly or broadly. One might have expected her to analyse their responses in that context, setting aside those with perhaps other axes to grind. To treat, then, ‘members of the public’ as an undifferentiated whole – and it is the supposed weight of ‘public opinion’ which is mainly brought to bear in this report – is to miss a very important trick. To be sure, all such consultation exercises which invite responses have ‘bias’ built into them in the sense that they are not, and cannot be, surveys of public opinion tout court. They plainly comprise people who have been moved to respond to the consultation exercise, for whatever reason. That, plainly, is the nature of such exercises. For example, the overwhelming proportion of people who responded to the government’s consultation on banning smoking in public places were indubitably in favour of such a ban. One cannot, however, infer from this evidence that the public as a whole is in favour of such a ban. It turns out, of course, that the public is in favour of a ban, but we can only tell that from properly representative surveys of public opinion. There are temptations to treat consultations as such; witness, here, the sentence following the above:
‘Thus, the overall experience of the members of the public who had responded to the consultation appeared to be broad with responses informed by a wide range of perspectives and involvement.’ (ibid.)

This statement may be true only insofar as it contains people who might be hostile, neutral as well as sympathetic to the Law Society and the legal profession/system, for example, but one can only analyse their responses in that context. What one cannot do is to treat these exercises as a quasi-random sample on an ‘as-if’ basis.

3.6 It is good professional practice in survey research, when one has a self-selected sample, to set its parameters such as age, gender, social class and so on against those of the population as a whole; in other words, to show that x% of respondents are over 50 years of age compared with y% of the population as a whole. In this way, the reader can judge how ‘representative’ or otherwise responses are. The researcher tries to deal with this crucial point thus:

‘The consultation attracted a sizeable volume of responses from a wide spectrum of respondents representing a variety of perspectives. Remote, rural and urban locations were also represented among respondents. It was interesting to note the relatively high percentage of responses to this consultation from members of the public compared with similar consultation exercises. Considering the encouragement given to solicitor firms to respond to the consultation, it could be argued that the number of submissions from solicitors and advocates was lower than could have been expected. In addition, a small number of equality issues were raised by respondents to the consultation, suggesting that another ‘gap’ in submissions may be responses from representative equality bodies.’ (p.16)

There are a number of dubious inferences contained therein.

3.6.1 The reader is unable to judge whether or nor the spectrum is indeed wide, because no data on respondents are given. We are left to accept or reject the author’s assertion. Although we are told that ‘locations’ are diverse, we are given nothing on which to judge that, and no other social characteristics such as age, gender, social class etc are mentioned.

3.6.2 We are unable to judge for ourselves the ‘relatively high percentage of responses to this consultation from members of the public compared with similar consultation exercises’. Compared to what, one might ask?

3.6.3 The point about the perceived lack of response from individual solicitors and advocates is unwarranted, especially if it infers that they don’t much care either way. In the first place, if one agrees with one’s professional association, why write in saying so? And what number might the author ‘have expected’?
3.6.4 The equality issue seems to be a red herring, or to alter the metaphor a little, to come from someone with a particular fish to fry. One cannot, surely, point out that solicitors have somehow been remiss in not replying, whereas ‘equality bodies’ have somehow been excluded from the exercise. There is chop logic involved here.

3.7 In defence, one might point out that the remit is to make sense of written submissions, rather than to carry out scientific surveys of public opinion. What, in other words, can one do? It is interesting to look at how the Review of the Regulatory Framework for Legal Services in England and Wales, by David Clementi, handled these issues. The report points out that 265 written responses were received (to play the numbers game for a moment, and for effect, just over half the number received by the Scottish Executive), and these are treated as background information. In order to gauge public opinion, Clementi commissioned quantitative and qualitative research from MORI, involving a sample size of 1838 adults in England and Wales, as well as 12 focus groups. Among other questions, the survey asked about people’s views of the legal profession (mainly favourable, and well ahead of politicians and government ministers, but not as popular as teachers, doctors and nurses), their levels of knowledge of and involvement with law, when and why they consult lawyers, and their attitudes to legal services involving non-lawyers. In general terms, the survey work concluded that lawyers were not as well regarded as other professionals, less customer focused, approachable and transparent, but on the other hand, independent and providing a good quality service. The point about making this comparison between the reviews of regulatory frameworks for legal services north and south of the border is not to compare like with like, but to point to alternative ways of seeking and interpreting evidence, with a view to making policy changes in regulatory frameworks.

4.0 LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL: OBSERVATIONS

4.1 membership of SLCC:
4.1.2 all members including legal members are to be appointed by Scottish Ministers;
4.1.3 Scottish Ministers can remove a member from office;
4.1.4 there is no mention in the Bill itself of the Scottish Commissioner for Public Appointments, or of public appointments procedures, although these appear in the policy memorandum (p.6, para 26);
4.1.5 SLCC will have a Chief Executive to be appointed by the Commission, ‘with the approval of Scottish Ministers’

4.2 Costs:
4.2.1 whereas start-up costs are estimated at £451k, the running costs of the Commission are estimated at £2.4m p.a. Given that the Bill estimates that the Commission will have between 50 and 60 staff, one must ask how realistic this is;
4.2.2 Scottish Ministers can make grants to SLCC, not simply for start-up costs, but in the future, without any indication what these might be for;

4.2.3 the recurrent costs are to be met wholly by the legal profession whereas control is vested in the Commission and in Ministers. On the reverse principle that ‘he who calls the tune forces the piper to pay’, this has potential to be an open-ended and unpredictable commitment to be met by the profession;

4.2.4 complaints become much more expensive to handle. It might be helpful to give estimates for the unit costs of handling current complaints, versus future ones, given the significant fixed costs reflected in the Commission, which are to be carried by the profession, especially as there appears to be a ratchet effect as regards costs.

4.3 Interpreting the Consultation exercise: see Policy Memorandum:

4.3.1 para 15: this is a straight lift from the Report. It comments: ‘Thus, the overall experience of the members of the public who had responded to the consultation appeared to be broad with responses informed by a wide range of perspectives and involvement.’ See my comments on this in my analysis of this document. One cannot make this inference from the evidence given.

4.3.2 Para 31: ‘... overall the consultative response favoured option D...’ I have shown that this is technically incorrect insofar as a minority of ‘members of the public’ explicitly say so.

4.3.3 Para. 37: ‘... split between the public...’ (a) ‘the public’ per se did not respond to this; one is talking here of those who made submissions; (b) on its own admission, ‘members of the public’ who did so were differentiated into those who had been complainants and those who had not. The Report does not disaggregate these, even though it was possible to do so according to the evidence given.

5.0 COMPARATOR PROFESSIONS

5.1 Institute of Chartered Accountants of Scotland

5.1.1 ICAS has 15,000+ members, who are mainly (80%) employees rather than in private practice. Recently, there has been a significant increase in student members, especially located in England; thought to be due to quality of training and education provided by ICAS.

5.1.2 Not all accountants are members of ICAS; name ‘accountant’ is not legally protected. However, term ‘Chartered Accountant’ is reserved to members of ICAS, founded in 1854 by Royal Charter. ICAS is not ‘generally able to intervene in legal disputes between a client and their CA’ (ICAS, Complaints against Chartered Accountants, 2001: 5.1\(^1\)).

\(^1\) This document is due to be updated soon.
ICAS requires practising members to take out Professional Indemnity Insurance (5.3). Fee Arbitration Service uses CA arbiters appointed to act as Auditors of Fees (7.1).

5.1.3 Where complaints cannot be resolved by conciliation, they are referred to the Investigation Committee (9.1), which is made up of CA and lay members. Having lay members began in late 1980s, when ICAS went to Scottish Consumer Council. In a committee of 20, around 7 are lay members. These are ‘people from other walks of life who ensure that the Committee deals fairly and even-handedly with every complaint’ (9.1). Adverts are placed in newspapers; lay members are paid a per diem fee. Discipline Committee also has a number of lay members, and functions similar to a court or tribunal. ICAS also advertises for lay members of Council; council members cannot sit on Investigations Committee or Discipline Committee.

5.1.4 Lay members mainly come from law and related professions (e.g. former police officers). ICAS looks for qualified lay members according to matrix of skills required e.g. of small businesses or whatever.

5.1.5 ICAS Response to Professional Oversight Board for Accountancy (POBA) report entitled ‘Complaints and Discipline Procedures Review’.

1. For 20 years, ICAS has had an arbitration scheme (Auditor of Fees); not independent, being administered by ICAS and featuring only ICAS members as arbiters; deals only with fee-related complaints.

2. The paper takes a robust attitude to ‘growing regulatory burden’, and its response to POBA recommendation is ‘underscored by the belief that the reparation or compensation culture (an important subsidiary of the ‘Complaints Industry’) that has rapidly permeated society militates against enterprise and has tipped the balance unfairly against professional of every kind.’

3. ICAS proposes three stages to Alternative Dispute Resolution (ADR): in-house conciliation; external mediation; and external arbitration (note that arbitration only follows mediation). It does not believe that ICAS has responsibility to resolve disputes where internal conciliation fails. It supports independent administration of mediation, away from ICAS, and at no cost to it. Arbiters therefore should not be given powers to compensate, and calculation of consequential loss should not fall within arbitration scheme; ‘There is no substitute for the Courts in this respect’.

4. ‘… any complaint that cannot be settled by secretariat conciliation in the first instance, must not be remitted to a mechanism that begins to erode the private law position of the member against the client. For that reason alone, members should not be compelled to remit disputes involving clients to arbitration. The mediation mechanism that ICAS proposes is the optimum from the point of view of keeping private law positions of member and client as equal as possible.’ (p.6)
5. ICAS is also concerned that POBA would prefer a single scheme in which all accountancy bodies are participants, and which would almost certainly be run from London. ‘ICAS does not believe a dissatisfied client in Scotland would willingly cede authority for the conduct of his case by someone at so far a geographical remove … In any event, contracts between clients and members which are performed in Scotland are therefore governed by Scots Law.’ (p.6)

5.1.6 General Observations:
1. in 2005, failure of proposed amalgamation of ICAEW and CIPFA, and opposition to ICAEW name-change to ICA (Jack McConnell also voiced opposition, as did Australian body)

2. ICAS: complaints about individual members (E & W complaints against firms; also has schedule of penalties; ICAS doesn’t); ICAS does not have powers to compel witnesses to give evidence.

3. POBA gave ICAS a clean bill of health. Powers to suspend members are being beefed up at moment.

4. ICAS has no equivalent of Guarantee Fund.

5. ICAS does not have tribunals established by statute; it is inspected by DTI and Insolvency Service.

6. Decreasing number of complaints in recent years: from 239 in 1998 to 56 in 2005; thought largely to tightening up of professional standards.

7. New rules being negotiated via Privy Council (governed by Royal Charter slows things down); ‘polluter pays’ scheme being introduced. There will be an additional levy to pay for this. New joint disciplinary scheme with ICAEW.

8. Setting up of Accountancy Investigation and Disciplinary Board (AIDB), POBA successor to Review Board.

9. ICAS seems based on model of private professions who are largely self-regulating, but with lay members on committees; no suggestion of state regulation; autonomous and independent body from ICAEW (competitive?); jealous of independence; seems quick on its feet. It has managed to reduce significantly number of complaints against its members over the years, and to expedite these.

5.2 GENERAL TEACHING COUNCIL

5.2.1 An advisory NDPB, and statutory organisation; example of public sector professional body with registration and regulatory functions. Self-funding (subscriptions from registered teachers), and accepts government funds to carry out specific reviews by negotiation. It is a more powerful, and older (set up under Teaching Council (Scotland) Act 1965), body than its
English equivalent. It confers registration on teachers; and gives advice to Scottish Ministers. It is deemed by itself and outside observers as an influential body with regard to government policy. It claims to have good relations with civil servants and through them, with ministers. The Act does give ministers the power to overrule, but this has not happened. It also helps that SE does not employ teachers directly, which is done via Local Authorities and CoSLA – a useful buffer.

5.2.2 The formation of the General Teaching Council for Scotland in 1965 resulted from widespread concern that entry standards to the Scottish teaching profession had been lowered by government action since the time of the Second World War. In particular, the employment in schools of unqualified teachers in response to teacher shortage.

5.2.3 The Council's main functions are:

1. To maintain a register of those entitled to teach in public sector schools and colleges in Scotland;
2. To determine whether, in any particular case under its registration and disciplinary powers, registration is to be refused or withdrawn on grounds of professional conduct;
3. To keep under review the standards of education, training and fitness to teach of persons entering the teaching profession in Scotland and to make recommendations to Scottish Ministers on this matter;
4. To make recommendations to Scottish Ministers on the supply of teachers;
5. To oversee the management of the probationary period for teachers;
6. To accredit all Chartered Teacher programmes and modules and award the Standard for Chartered Teacher;
7. To accredit all programmes and modules leading to the award of the Standard for Headship;
8. To make recommendations to Scottish Ministers on the continuing professional development and staff development review of teachers;
9. To keep itself informed of the education and professional preparation of teachers in teacher education institutions and to review the content and arrangement of teacher education courses.

5.2.4 The Council's powers are to be extended (at a date to be announced) to enable it to determine whether registration is to be refused or withdrawn in cases relating to ill-health and competence. An extended range of disciplinary options short of withdrawal of registration will also become available to the Council at that time.

5.2.5 GTCS has around 76,000 members, each paying £20 p.a.; budget of c£1.5m (roughly doubled since 1998).

GTC has virtual 100% coverage in Scotland in public sector, and around 70% in independent schools, mainly bigger and old merchant company schools. In England, registration is not compulsory, reflected in
weakness of GTCE. Nevertheless, GTCS operates ‘five nations’ arrangements with counterparts in E, W, NI and RoI.

GTC Council has 50 members; 26 elected by the membership, 18 appointed (including 3 Faculty Deans – used to be under elected members), and 6 nominated by Scottish Ministers (used to be Sec of State for Scotland). Nominations to Council are solicited via the press as set out in 1965 Act. Appointments use OCPAS route. GTC moved to present HQ in 1998, and now employs 57 staff (compared with 28 pre-1998).

5.2.6 Impact of ECHR, notably on equality and disability legislation, and on handling complaints – fair trial, etc. Usually, GTC lets law take its course, before deciding on discontinuing registration. On questions of proven illegality: issue is how relevant it is to professional activity. 2000 Act gives wider repertoire of powers. GTCS resists direct role in dismissal on grounds of competence before or unless teacher’s employer has taken decision to dismiss.

Where GTC is unable to satisfy complainant, cases can be referred on to Scottish Public Services Ombudsman. To date, only 2 (same person) have done so.

In 1999, Scottish Office instigated review of GTC, carried out by Deloitte and Touche. Another review is about to be announced. In their 1999 review, D & T used benchmarking with comparator bodies, e.g. LSS, GTCE, UKCC, General Dental Council, and two teachers boards, one in Canada and one in Australia. D&T decided on this, not GTC. The benchmarking data are available in the 1999 report, and while dated, might be of some relevance. Relevant comparative dimensions included: aims, functions, election methodology, membership, funding, role of competence, discipline, future changes.

5.2.7 Observations
Plainly, GTCS is dealing with public sector professionals, and there is a longstanding separation from representative functions. It is interesting nonetheless that GTCS seems to have ear of senior politicians and administrators, and has managed to circumvent controversy at a time where considerable public and press interest in matters of care of children, and a few high-profile controversies. This is not to suggest GTCS is untouchable, but that it has Intelligence to know what is going on, especially re matters of professional regulation and risk management.

5.3 GENERAL MEDICAL COUNCIL

5.3.1 Role of the GMC (from their website: http://www.gmc-uk.org/). The purpose of the General Medical Council (GMC) is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.
The law gives four main functions under the Medical Act 1983:

- keeping up-to-date registers of qualified doctors
- fostering good medical practice
- promoting high standards of medical education
- dealing firmly and fairly with doctors whose fitness to practise is in doubt.

5.3.2 Protecting the public

“We have strong and effective legal powers designed to maintain the standards the public have a right to expect of doctors. We are not here to protect the medical profession - their interests are protected by others. Our job is to protect patients.

Where any doctor fails to meet those standards, we act to protect patients from harm - if necessary, by removing the doctor from the register and removing their right to practise medicine.

The GMC is an independent body and represents a partnership between the public and the profession. This concept of ‘professionally-led regulation in partnership with the public’ enables the GMC to set a framework of standards and ethics that is owned by the profession while reflecting the views and expectations of the public. The values are embodied in the publication Good Medical Practice, which underpins all the GMC’s work.”

5.3.3 legal status

The General Medical Council (GMC) was established under the Medical Act of 1858. also a registered charity (registration number 1089278).

The governing body, the Council, has 35 members:

- 19 doctors elected by the doctors on the register
- 14 members of the public appointed by the NHS Appointments Commission
- 2 academics appointed by educational bodies - the universities and medical royal college.

5.3.4 Developing Medical Regulation: a vision for the future (April 2005)

This was GMC’s submission to the Donaldson Enquiry – which was due for publication in Dec. 05 –still not published.

Key issues aimed at improving effectiveness of regulation over next 5 to 10 years:

1. more effective connections between different elements in regulatory environment.
2. Need for regulation to develop more creative approach to engaging with patients and public.
3. Make register of medical practitioners more accessible and relevant to users
4. Risk-based approach to regulation: the need for regulation to be targeted towards areas of perceived risk. “We need to be fully conscious of the
burden of regulation and ensure that it does not get in the way of good health care … we want to regulate with a light touch where the regulatory risk is low and with a greater scrutiny where it is higher." (Intro)

5. Making sense of complaints and fitness to practise: need to make clear distinction between dealing with questions of fitness to practise (which is for the regulator to do) and resolving complaints (which is for others).

Para. 15, p.6: models of professional regulation.

At one end: system based on deterrence, focused on wrong-doing and punishment: prescriptive, rule-bound, reactive, mistrust of those regulated.

“It is the regulator as policeman whose task is to catch miscreants.” (p.7)

at other end: model based on compliance, where underlying assumption is integrity and competence of majority of regulated professionals; emphasis on being proactive and encouraging improvement through guidance rather than detailed and prescriptive regulations.

Para. 69, p.13: a ‘risk-based’ approach to regulation. GMC is committed to the principles of Better Regulation Task Force – proportionality, accountability, consistency, transparency and targeting. ‘Proportionality requires that policy solutions be proportionate to the perceived problem or risk.’ (p.13)

Para. 86, p.15: avoid the ‘complaints maze’ by creating a portal for complaints about health care in UK (in context of NHS, GMC etc) – presumption should be of local handling of complaint in first instance and only passed to GMC if that becomes justified by further, additional evidence.

Para. 159 ff. p.24: July 2003; number of members of Council (i.e. governing body of GMC) reduced from 104 to 35.

Current policy of GMC is that majority should be elected medical members. Para. 165 comments: ‘Other professions are also reviewing the manner of their regulation, most notably the legal professions.’ [context of Clementi?] – but ‘the environments of within which medical and legal practice operates are very different.’ (para. 174: p.25)

Para.164: in light of Dame Janet Smith’s fifth report on Shipman case (http://www.the-shipman-inquiry.org.uk/fifthreport.asp); query whether elected members have a conflict between interests of their electorate and the public interest (‘doctors regulating doctors’). ‘We accept that the election by doctors of a majority may give rise to the perception of a representative body and that in turn might have an impact upon public confidence.’ (para. 174: ‘adjudication could be completely separated from the GMC, as Dame Janet Smith recommended.’)

Para. 165: ‘Other professions are also reviewing the manner of their regulation, most notably the legal professions. It is also a matter being
considered by the Better Regulation Task Force [now, Commission] and, most recently, the Independent Commission for Good Governance in Public Services."

Para. 172: for 2004, percentage of successful appeals constituted 0.7%

Para. 178: regulation is a ‘reserved’ matter to Westminster, and thus accountability should be to WMP. Nevertheless, differing clinical governance exists in different parts of UK, thus office established in Edinburgh in 2004, and one in Cardiff in 2005.

Annex C: p.31; Report also cites Independent Commission for Good Governance in Public Service (by Langlands, 2005) http://www.opm.co.uk/ICGGPS/.

5.3.5 Issues re LSS:
1. high profile cases e.g. Bristol; Shipman – GMC under even more pressure re medical issues than perhaps lawyers are.
2. Issue of ‘doctors regulating doctors’ even where election to council; ‘just a cosy club’? (Professionally-led regulation in healthcare – just a cosy club?’, Social Market Foundation, Nov. 2004). Graeme Catto (President of GMC) comments: ‘I do not believe at all in self-regulating professions but I do believe very strongly in professionally-led regulation.’
3. Problem of external regulation seen as giving rise to ‘a rising mass of codified petty regulation, swollen by the need for rules to enforce rules and to counter their avoidance’ (by Fred Hirsch; quoted by Catto on p.16)
4. ‘You could have a lay body that had professional advice and ask it to regulate the profession, but it is likely to alienate those you most wish to regulate.’ (Catto, p.17)
5. Issues of ‘fit for purpose’ and ‘proportionality’; development of risk-based regulation (see Better Regulation Commission). GMC sees opportunities in a multi-tiered regulatory model (inculcating ‘individual consciousness’ and best practice for each doctor = self-regulation; through team-based regulation (‘the practice’); work-based regulation (e.g. hospital); up to national regulator e.g. GMC. GMC should not see all complaints (‘croutons in soup’ case – whereby a doctor was prosecuted for taking croutons ‘without paying for them’ in hospital canteen.) Also work with Royal Colleges to develop shared regulatory instruments.
6. Finance? While doctors pay a registration fee, they can set it against tax, so in that respect it becomes ‘public money’. Nothing wrong with doctors paying a license fee, like a taxi driver, thereby public get reassurance. Problem is costing of regulation set against proportionality; need for this to be accurately done, otherwise it becomes open-ended costs on practitioners.
7. Scottish/English differences? While some 15% of doctors have a Scottish registered address, about 8% of the UK medical workforce actually work in Scotland, but only 4% of complaints relate to doctors working in Scotland. This calculation can be made because the GMC is a UK-wide body, unlike their legal counterparts.
5.4 FINANCIAL OMBUDSMAN SERVICE

5.4.1 Financial Advisors are subject to stringent regulation by FSA, and specifically the Financial Ombudsman Service (FOS) which is responsible for resolving complaints about financial services quickly and with minimum formality. Under the Act, FOS comprises two jurisdictions: the compulsory jurisdiction covering firms which are required to participate in the FOS in respect of complaints about activities specified by FSA; and the voluntary jurisdiction covering financial services activities not included in the compulsory jurisdiction.

5.4.2 FSA has extensive handbooks, including regulatory processes and dispute resolution (http://fashandbook.info/FSA/html/handbook). The role of FOS is to settle disputes, as an alternative to the courts; it is not a regulator or a trade body or a consumer champion. Its main aim is to help settle individual disputes between consumers and financial firms. It covers a wide range of financial matters, from insurance and mortgages to savings and investments. FOS is independent; complainants who are not satisfied are free to go to court instead, but if they accept the ombudsman’s decision, it is deemed binding on both complainant and the form. It aims to resolve cases within 6 months, except in complex cases such as those concerning mortgage endowments which represent some 250 complaints per day. FOS does not publish the names of firms or consumers whose cases it handles.

5.4.3 FOS is answerable to FSA which in turn is answerable to the UK parliament, via The Treasury. All directors are appointed by FSA, and the case of the Chairman, with the approval of Treasury. ‘In the appointment of Directors, the FSA will have regard to the need to achieve and maintain an appropriate balance in the composition of the Board and will take account of the views of the Chairman of FOS.’ (Memorandum of Understanding between DSA and FOS; para. 29) The board members of FOS are non-executive with no involvement in individual complaints. Their job is to ensure that FOS is properly resourced and is able to carry out its role effectively and independently.

5.4.4 According to Handbook Guide FISA 11 (Complaints), FOS collects complaints data to assist in the monitoring of firms and their regulatory compliance. Firms are required to report twice a year, six months pre- and post its accounting reference date.

5.4.5 FSA issued a consultation paper (no.30) in October 1999 on the regulation of professional forms. Chapter 12 set out its thinking on ‘financial’ versus ‘professional’ service complaints, as follows:

‘Complaints that relate purely to a form’s professional services with no element of activity captured by the compulsory jurisdiction of the FSO scheme will remain the responsibility of the relevant professional body.’ (para.12.5)

FSA recognises, however, that many complaints will be hybrid, relating in part to financial services and to professional ones, and resolved to
pass details of complaints concerning non-financial service activities of a firm to the relevant professional body. In particular, it gives examples of non-mainstream investment business activities carried on by professional firms including: a solicitor acting for executors arranging the sale of shares on instruction of executors and trustees; a solicitor doing matrimonial work who obtains IFA advice on unit trusts, pension and endowments in joint names; a solicitor acting for an estate or trust who holds unit trusts and share certificates; a lawyer performing residential conveyancing who makes arrangements for transfer of shares in a management company; and see appendix B.

6.0 GENERAL OBSERVATIONS

6.1 The proliferation of regulatory bodies in recent years is causing general concern. Such bodies often take on a life of their own, and in Fred Hirsch’s words, result in ‘a rising mass of codified petty regulation, swollen by the need for rules to enforce rules and to counter their avoidance.’ (quoted by Graeme Catto, President of the GMC). The scale and complexity of what ICAS refers to as ‘the Complaints Industry’ is here to stay. We hear little these days about the need for a ‘bonfire’ of quangos, of non-departmental public bodies (NDPBs) being dismantled. There is now a regulatory industry with a relatively self-contained career structure such that individuals can move from one to the other, gathering up expertise, and applying it to a cognate area of regulation. This proliferation is recognised by the UK Better Regulation Commission (BTC) with its insistence upon the ‘one in, one out’ principle, although one might be sceptical that such a principle will ever apply.

6.2 As regards the legal profession in Scotland, the impact of the Clementi Report is very obvious. This seems to be a well-argued and astute document, and Clementi even took the precaution of having the system of regulation in England and Wales professionally costed. One might, however, be sceptical that these will remain within the bounds set by Ernst and Young for Clementi. There is also the powerful input of the Department of Constitutional Affairs which is a relatively new player in this regulatory game, and one, no doubt, keen to establish its presence.

6.3 This raises the issue as to whether or not Scotland should be doing things differently. On the one hand, the system is smaller and less complex, but on the other hand, it is not difficult to see the influence of Clementi in the proposals in the bill, and undoubtedly civil servants at least found it a useful benchmark. There is, however, a serious issue as to how these matters play in Scotland. If nothing else, there is a point to be made as the legislation goes through parliamentary committee that the political system should be very careful of landing the profession and their clients with an over-elaborate and costly system, something of a ‘hammer to crack a nut’. There may well be scope to set the number and type of legal complaints in context: have they increased or decreased over the years? Changed in type and impact? Are they proportionately
more of less than south of the border (the GMC have made this point to show that Scotland is less subject to complaints).

6.4 There is little doubt that the analysis of the consultation exercise left a lot to be desired. It certainly conforms to the usual kind of Scottish Executive exercise in being quick and dirty, but it should not be allowed to become conventional wisdom. It contains some elementary howlers, and there might be scope in committee to raise this (one can hear some MSPs lazily reaching for it as incontrovertible evidence of public discontent). Some counter-analysis of the submissions would have probably helped to spike some guns, but possibly that moment has gone, and probably would now be seen as special pleading. It does not seem sensible, however, to let politicians get away with lazy nostrums based on half-baked evidence.

6.5 As regards comparator professions, lawyers are at some disadvantage. Plainly, the separation of representative and regulatory functions has been impacting on all professions for some time. Comparison with ICAS, for example, provides a good example of a robust defence of essentially a private sector organisation, although it has the advantage that it does not carry a Guarantee Fund, nor deal with ‘service’ complaints. The GTC is patently a public sector professional body which has, over 40 years, developed its professional and political standing, such that it does not weaken its independence by dealing with government, even when pre-1997 that government was frequently ideologically hostile to public sector professionals. The GMC has had to deal with some very public controversies (Bristol, Shipman etc) and in the course of these has had to take on the accusation that it is a ‘cosy club for doctors regulating doctors’. Its president Graeme Catto had a nice line: ‘I do not believe at all in self-regulating professions but I do believe very strongly in professionally-led regulation’. The Law Society may not, thankfully, have to deal quite so often in matters of life and death, but there is much to be learned from the way the GMC has gone about its business, seemingly one step ahead of the critics, or at least well able to respond. Finally, the financial industry itself has developed far-reaching mechanisms for regulation and complaints-management. There is mileage in pointing out that while it distinguishes financial and professional matters, it recognises that this is not always a clear-cut distinction, and one imagines the legal profession agree with that. FSA/FOS regulation is well-developed and fit for purpose.

6.6 My own reading of relevant documents is that the Law Society has two major grounds for concern. Firstly, membership of the proposed regulatory body seems too closely in the gift of government and politicians, even where this is managed via OCPAS rules ensuring due process. It is proposed that a majority of SLCC will be lay persons appointed by Scottish Ministers, unlike the comparator professions examined where professionals are in the majority. While one can trust OCPAS to ensure that due process is observed, there is a prior issue as to how lay members emerge in the first place, newspaper
advertisements seeming to be the usual method. The task is one of encouraging a wide and diverse range of people who do not have particular axes to grind. Secondly, and possibly more dangerously, there seems to be a serious lack of articulation between the system of regulating the legal profession in Scotland, and how it is paid for. In other words, it seems that the profession will pay for a system (minimally employing 50 to 60 people, and one imagines, a lot more than that; how was that figure calculated?) but the regulatory system does not directly to raise its own revenue. This is not to argue that the system should be publicly funded – this has its own downsides, but that there are no obvious cost constraints. In short, costs may inflate as the regulator finds more things to do. The Better Regulation Commission is a strong advocate of two related principles: of proportionality and fit-for-purpose. There must at least be a risk that the new regulatory system for the legal profession in Scotland fails to meet those principles.
Finance Committee

12th Meeting 2006 – Tuesday 25 April 2006

Scrutiny of Financial Memorandum – Evidence on the Tourist Boards (Scotland) Bill

1. The Tourist Boards (Scotland) Bill ("the Bill") was introduced to Parliament on 20 February 2006. The Enterprise and Culture Committee has been designated the lead committee for the Bill at Stage 1.

2. The Finance Committee agreed at its meeting on 28 March 2006 to adopt a level 2 approach to its scrutiny of the Bill. The Committee agreed to issue its standard questionnaire to VisitScotland and to COSLA and take oral evidence from Scottish Executive officials at its meeting on 25 April 2006.

3. The following submissions have been received so far and these are attached:

   • COSLA
   • VisitScotland

Susan Duffy
Clerk to the Committee
Submission from COSLA

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

   Yes COSLA took part in the consultation exercise for the Bill. No, we did not comment on the financial assumptions as the Bill has no direct financial implications for Local Government.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

   Not applicable.

3. Did you have sufficient time to contribute to the consultation exercise?

   Yes.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

   The Bill has no direct financial implications for Local Government. However, VisitScotland’s Board is responsible for the disbursement of public funds that are in part provided by Local Government i.e. £19.5 million over the financial years 2005/06, 2006/07 and 2007/08. As a result, COSLA is of the strong view that Local Government should have increased representation on VisitScotland’s Board.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

   Not Applicable.

   *We are content that Scottish local government provides a proportion of VisitScotland’s funding as this makes the organisation more accountable to developing tourism at a local and national level that is vital to the local economies of our member councils in Scotland. Local authorities continue to work with VisitScotland across the country to ensure value for the funding that they provide.*

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

   Yes, we believe so.
Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not applicable.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

No, we would not anticipate future costs associated specifically with the Bill, unless the permanent name change for the organisation to “VisitScotland” is subject to changing consumer preferences and trends in future years, which may see it becoming outdated and unfashionable, which might require a full scale rebranding exercise.
Submission from VisitScotland

Introduction
VisitScotland welcomes the opportunity to submit evidence to the Finance Committee on the Financial Memorandum on the Tourist Boards (Scotland) Bill.

VisitScotland, as the national tourism agency, has a strategic role as the public sector agency providing leadership and direction for the development of Scottish tourism in order to get the maximum economic benefit for Scotland. It exists to support the development of the tourism industry in Scotland and to market Scotland as a quality destination.

Scottish tourism is a major and growing part of this country’s economy and VisitScotland and the Scottish Executive are together backing the industry to grow tourism revenues by 50% by the year 2015.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The VisitScotland response to the Scottish Executive consultation referred to the possible VAT implications of the dissolution of the Network Area Tourist Boards (NTBs), the temporary means by which the integrated tourism network was established in April 2005. The VisitScotland response made the following reference to the potential VAT liability:

In principle, VisitScotland supports the abolition of the current Network Area Tourist Boards (NTBs), the temporary means by which the integrated tourism network was established in April 2005. However, it is important to realise that one of the unintended consequences of the dissolution of the two NTBS will be to remove any chance of VisitScotland retaining the Trade Agreement for ATBs for VAT purposes. This could result in VisitScotland being responsible for additional tax payments of up to £2 million annually.

In addition, the VisitScotland response stated that, “the abolition of the NTBs could expose VisitScotland to a pension liability that is currently estimated at £7m”.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The issues raised in our submission to the Scottish Executive are the subject of ongoing discussions between VisitScotland and the Scottish Executive. A review of VisitScotland’s pension arrangements is currently being carried out by an actuarial firm and a number of options are being considered some of which would result in the potential liability not emerging, and we are confident that a solution will be found.
3. Did you have sufficient time to contribute to the consultation exercise?

The Scottish Executive consultation timeframe allowed sufficient time for a considered response to be made to the consultation.

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The financial implications that the Bill has for VisitScotland, aside from the VAT and pension liabilities mentioned above, are accurately outlined in the financial memorandum.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met

Aside from the concerns around the potential VAT and pension liabilities outlined above, we are satisfied that as an organisation we can meet the financial costs associated with the Bill. As an organisation we are committed to working within a tight budget and to the highest standards of financial management. As an organisation we have made great strides in reducing the deficits inherited from the former area tourist boards and at present we are forecasting a balanced budget for the 2006/07 financial year. This was not originally planned to happen until 2007/08 and represents an improvement in the operating performance of the organisation of £495k from last year’s forecast.

As a result of this sound financial management we have been able to offer the same service levels at a lower cost to businesses as the new approach of buying services is more cost effective than the former Area Tourist Board membership system. Therefore, as a result of the reorganisation we have been able to reduce costs to tourism businesses which they can reinvest in developing their business.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum incorrectly states that “local authorities have continued funding the Network Tourist Boards at the same level during 2005/06 by voluntary agreement”. VisitScotland received funding from local authorities in 2005-6 totaling £6,668,579 and funding for specific projects totalled £252,782 giving a total figure for local authority funding of £6,921,361. This represented a decline in funding of £2,119,165 against the level of funding to ATBs by local authorities in 2004-5. The main elements in this reduction were (a) a reduction of £1.7 million funding from City of Glasgow Council and (b) a reduction of £260,000 by City of Edinburgh Council. In both cases this reflected a transfer of funding to autonomous Convention Bureaux for the Cities.

In addition, the financial memorandum does not make reference to the fact that there is a degree of uncertainty in relation to local authority core funding going forward. Indications from local authorities are that core funding will reduce to an estimated
£6,108,673 in 2006-7. Project funding is predicted to increase to £508,239. The total expected funding is therefore expected to be £6,616,912 representing an overall reduction of 4.4%.

However, the figures outlined above are subject to final verification and the final approval of funding awards will depend on completing negotiations with individual local authorities; VisitScotland providing confirmation of out-turns on network office budgets for the past year, and confirmed spending plans for the coming year.

Notwithstanding this uncertainty, VisitScotland is committed to ensuring that the highest levels of service are maintained.

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

The Tourist Boards (Scotland) Bill enshrines in legislation the changes made to VisitScotland by the Tourism Network Scotland (TNS) project. The TNS project was the first phase of a longer term VisitScotland transition programme to deliver “one team for Scottish tourism working in partnership to exceed customer expectations”. It was also part of a wider range of initiatives to increase the value of tourism to the Scottish economy by 50% as articulated in the Scottish Executive’s recently published Tourism Framework for Change. The costs involved in this wider policy are accurately reflected in the Financial Memorandum. Although there remains some uncertainty regarding costs, as outlined above VisitScotland remains of the view that the integration has been successful and will assist us in achieving our growth ambitions.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

We do not anticipate any future costs associated with the Bill aside from the potential VAT and pension costs outlined above.