Submission from Glasgow Immigration Practitioners Group for the Legal Profession and Legal Aid (Scotland) Bill

1. The Glasgow Immigration Practitioners' Group (GIPG) is a group of solicitors in Glasgow working in the field of asylum and immigration. We are an informally constituted group with an elected Chair. We have been in existence since the year 2000 and we came together in response to the situation created by the Home Office policy of dispersal of asylum-seekers to Glasgow. We exist to provide mutual support to our members and to raise professional standards in a difficult field of practice. We have given evidence previously to the Scottish Refugee Integration Forum and are regularly consulted by the Law Society and the Scottish Legal Aid Board (SLAB) in relation to issues arising in the field of asylum and immigration.

2. We note from clause 47.- (2)(c) of the Bill that it appears to be proposed that Scottish solicitors practising in the field of asylum and immigration would be exempt from supervision by the proposed new Scottish Legal Complaints Commission.

2.1. It is not at all clear why the Bill proposes to place us under a different regulatory regime from that governing the rest of the legal profession in Scotland. We are anxious that the Scottish Parliament should recall that although immigration and asylum are reserved matters, the provision of legal services is not. We operate within the Scottish legal system and we take petitions and appeals from the Asylum and Immigration Tribunal to the Court of Session in Edinburgh, not to the Administrative Court or Court of Appeal in London. We are Scots lawyers.

2.2. We note that recent changes in the funding of legal services to asylum-seekers in England have given rise to serious concerns south of the border; see for example the report of 17th May 2005 by Asylum Aid, 'Justice Denied: Asylum-Seekers denied justice due to crisis in legal aid funding', which spoke of "systemic injustice for vulnerable asylum-seekers" and "reputable legal practitioners driven out of business, while rogue firms flourish". We are unaware of such concerns being expressed in Scotland about the functioning of the legal profession in this field of practice, as matters currently stand. We are therefore unclear as to the reasons why it is proposed to isolate us from the rest of our profession.

2.3. We are particularly concerned that it may be thought in some quarters that in the long term we should be placed under the supervision of the Office of the Immigration Services Commission (OISC) which currently supervises unqualified practitioners throughout the UK and by definition will have only a passing acquaintance with Scots law. No case for that has been put, so far as we are aware. The OISC is of course a creature of the Secretary of State for the Home Department, albeit following consultation with the Lord Chancellor and the Scottish Ministers, see section 83.- (2) of the Immigration and Asylum Act 1999. We are concerned that the Scottish Parliament may be at risk of ceding ultimate control over the regulation of an important area of legal practice by Scottish solicitors in Scotland almost by default and perhaps on the basis of a misunderstanding.

2.4. In short, we have no concerns about the new Complaints Commission, beyond those already properly expressed by our principal professional body, the Law Society, which concerns we share. We have considerable concerns about our field of practice being treated differently from the rest of the profession in Scotland. We consider that asylum and immigration is a field of practice that calls for the highest professional standards. Its practitioners should not be cordoned off as poor relations to the rest of the profession.

3. Part IV of the Bill concerns legal aid funding for unqualified ‘registered advisers’ subject to the supervision of SLAB. We have found that the lack of clarity in the clause 47.- (2)(c) to be such that we have debated its meaning at length. Clause 47.- (2) certainly requires to be clarified. It is not at all clear whether it is intended to exempt registered advisers from providing advice and representation in the field of immigration and asylum. If the clause excludes registered advisers from legal aid in this field of practice, then we welcome it.

3.1. We are quite clear that the only role there may be for registered advisers in our field would be where they were subject to supervision by solicitors. The primary reason for that is the sensitivity and importance of the work we do. Ours is a
vulnerable client group. It is important that advisers have access to the full spectrum of legal forums and are equipped to provide the full range of advice on all matters including detention, bail, appeals, and applications to the Court of Session. Potentially cases can and sometimes do go to the House of Lords, European Court of Human Rights at Strasbourg, or even the European Court of Justice at Luxembourg, especially given the increasing importance in this field of a number of EC Directives. It would be extremely worrying if immigration advice was hived off into separate sectors.

3.2. We would point out that onward appeal and petition for reconsideration from the Asylum and Immigration Tribunal is to the Court of Session. A considerable level of skill and experience is required to identify which cases to pursue to the higher courts, and which to decline to pursue. We seriously doubt whether such expertise could ever reside in the unqualified sector. Even if they were, they couldn’t competently sign the application for reconsideration, which is required by the Act of Sederunt to be signed by solicitor or counsel. We note also that the current time limit for an application for reconsideration is 5 days. It simply would not be possible for a registered adviser to pass a case on to a solicitor in that time scale. The net effect of an expansion of the unqualified sector outwith solicitors’ firms or law centres would be the denial of access to the upper courts to meritorious asylum and immigration cases.

3.3. We are not wholly opposed to the concept of registered advisers working under solicitors’ supervision in private firms or in law centres. Indeed some of us have unqualified caseworkers working in our organisations now. However, we have concerns about the expansion of the role of unqualified advisers, even under solicitors’ supervision, as set out below.

3.4. We note first of all that it is proposed that such advisers would be regulated by SLAB. Assuming that solicitors firms and law centres could register members of their staff as registered advisers, and assuming further that solicitors in our field would be regulated by an agency other than SLAB, then there would be the prospect of multiple regulation; the solicitor regulated by one agency, and the adviser working under supervision regulated by another. This cannot be intended. We also wonder whether there would not be a tension, in relation to its regulation of advisers, between SLAB’s entirely proper concern for economy on the one hand, and the need for quality control, on the other.

3.5. We also have concerns about recruitment and retention in this field. Asylum and Immigration law is notoriously pressured in terms of time limits and long hours of work necessary to meet them. There have been problems in the past in recruiting trainees to the field. A significant expansion of the role of unqualified advisers, even working under solicitors’ supervision, may well render it entirely uneconomic for firms and law centres to recruit trainees in this field of work.

4. We have no objection to the principle of the registered adviser, outwith the specialist field of immigration and asylum. However, we would make the following observation. We consider that the concept of ‘unmet legal need’ should be the subject of public debate and professional consultation. Legal needs change over time as markets come to fill them and new ones emerge; the appropriate responses shift over time as well. New section 12B-(1) of the 1986 Act, as would be inserted by Clause 45-(6) of the Bill, proposes that Scottish Ministers make regulations to specify the categories of advice and assistance that registered advisers would deliver. We urge that in the first instance such categories of Advice and Assistance should be clearly specified in the Bill and resultant Act following appropriate consultation with the widest possible range of stakeholders. These would include, as a purely illustrative list, not only groups such as ourselves, but the Law Society, the Scottish Association of Law Centres, the Citizens Advice Bureaux, charities and voluntary agencies working with asylum-seekers and immigrants. We urge further that such specified categories should not be set in stone but rather should be kept under active review in order to take account of the shifting shape of legal need. We agree with the proposals at paras. 59 and 60 of the Policy Memorandum that case-by-case funding of non-lawyers should be the exception rather than the rule.