



THE SOCIETY OF ADVOCATES IN ABERDEEN

Concert Court, Aberdeen AB10 1BS

Tel: 01224 640079

Website: <http://www.socofadvocates.com>

DX: AB 48

RESPONSE BY THE SOCIETY OF ADVOCATES IN ABERDEEN TO THE CONSULTATION ON THE CONSTITUTION AND STANDING ORDERS OF THE LAW SOCIETY OF SCOTLAND

The Council of the Law Society has produced a draft constitution and standing orders together with supporting documents for comment. In preparing this response we have referred to the Solicitors Scotland Act 1980, the existing Constitution and Standing orders, the draft Constitution, Standing orders and transitional arrangements, the background information note, the President's accompanying letter, the previous consultation on Council Reform (the results of which have not been published), the Legal Services Bill and the debates thereon before the Justice Committee. This response is not confidential.

RESPONSES TO THE CONSULTATIVE DOCUMENT

Constitution

1. Section 2 of the constitution deals with the Council of the Society and specifies the number of Council members.

Should the specific numbers of Council members be enshrined in the constitution or should more flexibility be built to allow Council to change its size to fit circumstances as they arise?

ANSWER: It is our view that Council members should be elected and the maximum number of Council members should be set. We suggest that the Council numbers need not exceed forty (but should perhaps be reduced to thirty) and that co-option should only occur in the event that there are insufficient elected representatives. In that event local faculties of vacant constituencies could be invited to nominate members for co-option. This will require some re-adjustment of the numbers of geographical representatives, but we consider that this is a matter which should be under review in any event.

2. Section 2 also specifies the term of office of each member of the Council as being three years and states that there is no limit on the number of terms of office that a Council member may serve.

Should there be a limit or a mandatory break after a specified time?

ANSWER: We are of the view that any member who is co-opted (see 1 above) should not serve more than one term, without standing for election. An elected representative should be free to stand for re-election.

3. Section 12 of the constitution states that a general meeting may be called if requisitioned by 100 members. Is this figure reasonable? Should the subject of the business have a time limit?

The Society:

President: Anthony J Dawson

Senior Vice-President: Alan A S Wilson

Junior Vice-President: Mrs Elizabeth J W Mackinnon

Executive Secretary and Librarian: Mrs Maria Robertson

ANSWER: No to both questions. We see no good reason to increase the requisition number from 20 as at present, to 100. Nor do we see why the subject of the business should have a time limit. We do not however think it is helpful to adjourn such a general meeting to a future date and this should only be done under exceptional circumstances.

4. Section 19 provides interpretations for common terms used throughout the constitution. Should these be listed in the standing orders instead to enable future changes such as simple terminology to be approved by Council rather than the entire membership?

ANSWER: No. The Constitution as the superior document should be so drafted as to stand alone without standing orders.

Standing Orders

1. The standing orders specify that the quorum for a general meeting is 50, substantive motions be signed by not fewer than 20 and it requires 100 members to call for a referendum. Are these numbers at the right level? Should they be related to the number of members of the Society (approximately 10,500)?

ANSWER: No to both questions. We see no good reason to (a) increase the quorum for a meeting from 20 to 50, (b) require a 'substantive' motion to be signed by more than a mover and seconder as at present or (c) increase the number calling a referendum from 50 to 100. These matters should be in the Constitution as at present rather than in the standing orders.

ADDITIONAL COMMENTS

1. On the topic of Standing Orders (1) above,
 - a. 2(a) We see no good reason to prevent a general meeting from being convened by a quorum presided over by one member of Council, as at present in terms of the constitution. This was required earlier this year to preserve the constitutional process. The proposal to require the President, the Chief Executive or the Vice president to preside at every convened meeting is not acceptable. The Chief Executive is not a member of Society and may only attend a meeting by permission of Society.
 - b. 3(b) The drafts contain no provision for notice of meeting but require a 42 day notice of motion. The notice of motion should be a shorter period than the notice of meeting so that members can know and respond to what is on the agenda. We consider that 21 days notice of meeting would be reasonable, and seven days notice of motion is sufficient to circulate the membership.
 - c. 3(f) We are particularly concerned to see that no decision made at a general meeting would be binding on Council, unless it was Council's own motion. We do not agree to this proposal. At present a resolution passed at two consecutive meetings is binding.
 - d. 4(a) We do not agree that seven days notice of amendment should be required. The process should be flexible, as at present, to allow amendments to a motion at any time before it is moved.

- e. 14(v) We do not agree that Council can legitimately acquire statutory power to regulate non-members by means of the standing orders. This is a matter for Parliament.

These points (a-d) together with items 15-19 of the Standing Orders are all matters for the constitution and not the standing orders which are temporary by nature and may be suspended by a decision of the meeting, or changed at any time by Council.

We have further concerns on the proposed composition of Council, and the delegation of power to the Chief Executive, the Board and the Nominations committee, which will tend to diminish the power of the membership and their elected representatives whose duty is to represent and regulate the profession. We see the proposed changes as anti-democratic in their outcome.

2. Constitution 2(k) LSS Council meetings should be open to members as observers, without restriction, to enhance transparency and accountability.
3. The Legal Services Bill at Stage 2 has been published. The terms of the Bill are not yet agreed in parliament and the Justice Committee has recommended further debate and consultation within the legal profession on proposed amendment 373 by James Kelly. This relates to the representative role of the LSS Council. We would welcome the opportunity to participate in such debate.
4. The Justice Committee has stated its preference to separate representation from regulation, with Council as a representative body only. The government does not require non-members to be on Council. We do not think that the motivation for appointing non-solicitors has been fully understood by the profession. The case for changing the existing constitution and standing orders has not been made to the profession. It is premature to make such changes before the result of the legislative process is known.
5. For the foregoing reasons we do not support the draft Constitution, Standing Orders or Transitional Arrangements as presented. This is not to be understood as meaning that we are resistant to change. We think change is both desirable and inevitable. We would welcome the opportunity to engage in a meaningful debate.

JULY 2010