



# REGISTERED PARALEGALS

**Position paper:** Creating a new professional status for Paralegals in Scotland, in association with:



SCOTTISH PARALEGAL ASSOCIATION

Neil Alan Stevenson – Head of Strategic Change

12<sup>th</sup> May 2008

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## A. INTRODUCTION

1. This document is issued by the Law Society of Scotland to prompt discussion with key stakeholders and its members on proposals to introduced a 'registered' status for paralegals in Scotland
2. **The Law Society of Scotland intends to work in partnership with the Scottish Paralegal Association (SPA).** The approach stated in this paper has been approved by both the SPA, at their 2008 AGM, and by the Society. Anyone is welcome to respond, whether a member of the one of these organisations or not.
3. Although developed in partnership the Scottish Paralegal Association the scheme will be open to all paralegals, whether a member of any current association or not. All those wishing to join will have to demonstrate that they meet the entry criteria (set out in Section D) will be able to register. Prior membership of any current body is not required in order to apply to become 'registered'. However, certain groups may be covered by transition arrangements (again, detailed in Section D).
4. The document provides:
  - background information on paralegals in Scotland;
  - indicates why the Society now feels it is important to create a 'registered status' (including the benefits to solicitor, paralegals and clients);
  - sets out proposals for discussion on how this may be achieved; *and*
  - invites responses from all interested parties on the proposals.
5. The document proposes that the Society work with the SPA to establish a 'Registered Paralegal' status, and that:
  - There are defined entrance requirements (including qualifications and experience)
  - Those eligible to join be required to commit to various standards (including a Code of Conduct and CPD requirements)
  - 'Registered Paralegals' will become members of the scheme, jointly managed by both organisations
  - Those in the scheme will receive access to variety of Society services and benefits (for example, receiving The Journal, tailored E-bulletins, and access to our Professional Practice advice lines)
6. This policy paper has been distributed and promoted to a variety of key contacts; including solicitors, paralegals, training providers, and other stakeholders. It is also publicly available

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on the Society's website. The Society would be grateful for your views, and those of your colleagues.

7. The fastest way to share your views and assist us in shaping this policy is by using the online '**rapid response**' form, which should take about five minutes to complete: <http://www.lawscot.org.uk/paralegals>
8. More detailed questions are set out in this document. Please feel free to answer all the questions or simply those you feel are most relevant. A summary of questions is included at the back of this document, and provides a template you can complete with your responses to the Society. A 'word' template of the questions is available to download from our website. In all cases it is very useful if the response can be made in electronic format. This significantly cuts the administrative task of the Society in collating responses, saving time and resource. We are happy to accept feedback in any format, but grateful to those who can e-mail us their response at the address below (ideally in 'word' format).
9. Finally, there is also a 'rapid response' form, which should take about five minutes to complete, included at the end of this document. This covers the same questions as the online questionnaire (which we would encourage people to use) but allows you to submit a quick response by e-mail, letter or fax.
10. **REPONSES SHOULD BE SUBMITTED NO LATER THAN 12:00 NOON ON FRIDAY 18<sup>th</sup> July 2008.**

### 11. CONTACT INFORMATION

Please send your responses, or direct any questions, to:

- **Neil Alan Stevenson – Head of Strategic Change**
- [registeredparalegals@lawscot.org.uk](mailto:registeredparalegals@lawscot.org.uk)
- T. 0131 476 8360, Minicom 0131 476 8359

Any parties interested in registering interest themselves, or for their staff, as members of any future scheme can register (by any of the above means) to be contacted as further information becomes available.

If your enquiry relates is about the Scottish Paralegal Association, you may wish to contact their President:

- **Christine Lambie**
- [Christine.Lambie@wgrant.com](mailto:Christine.Lambie@wgrant.com)
- <http://www.scottish-paralegal.org.uk>

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## B. BACKGROUND

### 12. THE SCOTTISH PARALEGAL ASSOCIATION (SPA)

The Scottish Paralegal Association was formed in 1993 and recognised by The Law Society of Scotland as the professional body representing Paralegals in Scotland in 1997. It is managed by an elected Committee of eight Paralegals who in turn elect their Office Bearers from among their number. Committee Members all work on a voluntary basis and in recent years have become more pro-active and established a closer relationship with the Law Society of Scotland. Members must comply with a Code of Conduct and CPD requirements, and receive a range of membership benefits (including free CPD). The SPA has campaigned for several years for regulation of Paralegals.

### 13. WHAT IS A PARALEGAL?

There is currently no fixed definition of a 'paralegal' in either Scotland or England and Wales. Those using the title do not require any particular qualifications, experience or to be registered with any professional or regulatory body.

14. From the perspective of the solicitor in private practice, the consensus seems to be that the essence of a paralegal, as opposed to other support staff, is that they are a 'non-admitted/solicitor fee earner'. For solicitors working within the in-house sector, paralegals are often seen as 'legally qualified' support staff, who can carry out specific tasks that would otherwise be carried out by a solicitor. Many paralegals will also assist with general administrative and business support.

15. Paralegals may work in a range of roles and titles can vary accordingly (for example; 'paralegal', 'legal executive', 'matrimonial executive', or 'conveyancer'). In Scotland it is estimated that there are approximately 10,000 paralegals. This comes from examining the data traditionally used to arrive at such figures (such as the number of legal support staff identified through studies such as the Cost of Time project), but then adding data from the high numbers of paralegals present in the public and private sector (for example, Local Authorities, The Scottish Executive, The Crown Office and Procurator Fiscal Service, and many large private enterprises from banking to manufacturing employ paralegals). The SPA and the SSP (discussed later) have also provided details of their current membership numbers.

### 16. WHAT QUALIFICATIONS DO THEY HOLD?

As already stated, there is no required qualification, but, many paralegals have formally taught and assessed qualifications.

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17. ***The main provider of specific paralegal courses within Scotland has traditionally been Strathclyde University/Central Law Training (CLT).*** These courses range from being eight weeks long (Debt Recovery) to twenty weeks long (Civil Court Practice) and all have a final written examination. Most can also be studied by distance learning. ‘Graduations’ are held annually. The most popular courses include; Company & Commercial Law, Employment Law, Civil Court Practice, Commercial Conveyancing, Consumer Law & Litigation, Conveyancing Criminal Practice, Debt Recovery, Family Law, Licensing Law, Reparation Law, and Wills, Trusts and Executries. The success of the qualifications in Scotland has led to the foundation of a similar programme of courses in England and Wales.
18. Strathclyde/Central Law Training will be one of the stakeholder bodies consulted on the detailed arrangements set out in this paper. However, in the development of this project they have already provided assistance and background information to the Law Society of Scotland. They also represent one of the largest interest groups, because of the numbers who have passed through their qualifications. The Society notes its thanks for their input so far, and we look forward to receiving their response to this document.
19. ***Rewards Training, in association with Glasgow Caledonian University,*** are another training organisation that has established a programme of courses, these currently cover areas such as Law of Trusts, Commercial Property, Debt Recovery, Delict, Criminal Law, Employment Law. The courses are available in Edinburgh and Glasgow. We hope Rewards Training will also provide comment on these proposals.
20. ***Another popular route to becoming a paralegal is to take an HNC or HND (Higher National Certificate / Diploma) in Legal Studies,*** these being accredited by the Scottish Qualifications Authority (SQA) and available throughout Scotland through local colleges. Recently the HNC/HND has been reviewed, with the input of both the Scottish Paralegal Association and the Law Society of Scotland. Professional Development Awards (PDAs) are now being developed, these a shorter qualifications which can usually be taken in evenings or through distance learning. The SPA has entered a joint awarding agreement with the SQA. More details can be found on the SQA website, listed at the end of this document.
21. The Society continues to encourage the development of these qualifications. The opportunity to assist in developing a nationally recognised and independently externally quality assured qualification is another step in the professionalisation of this sector of the legal services market. As with our current policy (under consultation) on training of solicitors we see a wide variety of providers as bringing value and expertise to the market, whilst also noting the value of working with an organisation such as the SQA.

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22. ***Some paralegals may have qualifications such as a BA in Law and Management, or other legal degrees.*** Many of these are taught by the same Law Schools as offer the accredited LL.B., and indeed in some cases students may have studied some of the same subjects in the same classes as those studying to enter the legal professions. However, these qualifications are not currently recognised as part of the route to qualifying as a solicitor.
23. ***A growing number of those working as paralegals will hold an accredited LL.B. (gained either prior to starting work or part-time during working).*** This group is likely to increase with the number of places on undergraduate courses rising significantly now that there are more universities offering the LL.B. Some may also hold a Diploma in Legal Practice, but have not yet found a traineeship.
24. Some paralegals hold additional professional recognition. For example, ***‘The Society of Specialist Paralegals’*** (SSP) which accredits practitioners in certain fields and allows individuals to use letters after their name. This body provides an alumni association for those who have obtained a Strathclyde/CLT qualification, and provides a magazine and further CPD opportunities. The Society recognises the value of such ‘quality marques’ and specialist development and assessment, and hopes such schemes will continue to be part of the market, in a similar way to the additional value ‘Signet Accreditation’ brings to the solicitors’ market. Whilst the Society is keen to see the ‘Registered Paralegal’ status develop, it currently has no plans of its own to focus on ‘Specialist’ accreditation and wants to work with existing organisations providing ‘quality marks’ to ensure a range of options for the future.
25. ***It is worth noting that the Society is already responsible for the regulation of Conveyancing & Executory Practitioners*** under the Public Appointments and Public Bodies etc (Scotland) Act 2003. The official Register of Conveyancing & Executory Practitioners in Scotland is maintained by the Keeper of the Registers of Scotland. Those registered hold a formal legal status, although take-up of the scheme has not been significant for a variety of reasons
26. This group may also choose become registered under the proposed scheme as well as, or instead of, continuing as a Conveyancing and/or Executory Practitioners. However, this demonstrates the Society’s ongoing role in regulation of the wider legal services market up to and including at a statutory level.
27. ***Another relevant group is the Society of Law Accountants in Scotland.*** This was established as a professional association for law accountants, and is underpinned by a two-

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year seven-module courses. This has the backing of the Society and the qualification obtained at the end of the course is now recognised as the official Law Accounting Qualification for staff working in solicitors' offices in Scotland. The independent Board of SOLAS is provided with administrative support by the Society. Some members within certain firms may well have a paralegal role, as well as the well recognised law accountant role, and may wish to consider 'Registration'.

28. ***In all cases in-office practical experience, as well as these qualifications, was seen as essential in trying to define a 'qualified' paralegal.*** Some paralegals will have simply worked in a solicitor's office for many years, receiving training and development on an ongoing basis from their supervising solicitors without ever taking a formal qualification. Many may have taken a qualification prior to starting work, during work on a part-time basis, or have taken time out of work to achieve the qualification. However, the highly practical nature of paralegal work seems to suggest that one is not 'fully qualified' until some in-office experience has been achieved.
29. ***It should be noted that the Society does not currently have an interest in establishing its own qualifications for paralegals or in developing its own programmes to allow entry to the 'Registered Paralegal status.*** There is a strong and respected mix of training provision within Scotland, and the Society hopes to work with existing providers.
30. **WHAT WORK DOES A PARALEGAL UNDERTAKE?**
- Paralegals can perform a wide range of tasks, typically delegated to them by a supervising solicitor. In all cases, the solicitor supervises the work and maintains responsibility for the work product. Examples of some of these duties may be:
- managing client relationships on a day to day basis
  - concluding missives
  - preparation of security documentation and title deeds
  - settlement of conveyancing transactions
  - estate agency
  - researching cases and other legal authority
  - factual investigation
  - preparing legal documents
  - reviewing and organising client files
  - assisting at and preparing a case for trial
  - assisting at depositions
  - summarising depositions
  - drafting interrogatory questions and answers
  - interviewing clients and witnesses
  - assisting in court
  - licensing work

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- debt recovery work
- employment law
- handling administrative matters
- communicating information to clients and other people

### 31. **WHAT PLACE TO THEY HOLD WITHIN THE LEGAL SERVICES MARKET?**

32. Paralegals are an essential part of the delivery of legal services in Scotland. The list of commonly held qualifications provided above also gives a flavour of the varied and demanding areas in which paralegals work, whether delivering high street legal services to individuals clients or supporting complex corporate and commercial work.
33. Many law firms and in-house legal departments in Scotland would not be able to operate as successfully as they do without paralegals, and many clients benefit from having an additional direct point of contact working alongside the solicitor who is also skilled in the particular area of work.
34. The Law Society of Scotland and the Scottish Paralegal Association recognise that a wide range of highly qualified individuals support the delivery of legal services in Scotland. HR, Accounting and IT professionals ensure the smooth operation of business units, as do many types of non-solicitor legally qualified staff.
35. However, it is apparent that the public and clients are not always clear what the role of a paralegal is. Even firms involved in the other side of a transaction may be unclear as to role of a particular paralegal, not being sure how the other firm applies the title to their staff and the level of skills and experience the person really holds.
36. It is strongly believed that the valuable role played by paralegals should be formally recognised. At the same time the responsibilities that this increasingly important role brings necessitate a formal system of 'regulation', even if on a voluntary basis initially.

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## C. WHY INTRODUCE A ‘REGISTERED PARALEGAL’ STATUS?

### 37. WHY DOES THE SOCIETY FEEL IT IS APPROPRIATE AND NECESSARY TO CREATE A ‘REGISTERED PARALEGAL’ STATUS?

There are various key issues that have been considered by the Society as it developed its proposals in this area. The Society is happy to provide further information on any of these areas. They can be summarised as follows:

### 38. *The Law Society of Scotland’s strategic ambition is: To be recognised as an effective, relevant and innovative professional body, protecting the public interest and leading a successful and respected profession.*

Four supporting ambitions were identified:

- *Ensure high standards for membership of the profession*
- *Continuously improve quality standards for the delivery of legal services*
- *Be the leading provider of business services, training and support to the profession*
- *Play a prominent role in civic Scotland*

### 39. *We believe that these proposals will bring greater clarity to the role*, qualifications, levels of experience, and standards relating to paralegals in Scotland. The use of IP law to create an initial framework, with the possibility of formalisation at a later date, is an innovative solution. It should increase the respect of this part of the legal market from stakeholders, clients, and the public, as well as helping ensure standards of delivery. Further professionalising legal support staff will also assist in continuously improving quality (for example, new requirements for CPD). Registration will also open up the Society’s business services and support to paralegals (for example, our ‘professional practice’ helpline). The Society therefore views this proposal as aligned to its strategic objectives.

### 40. *These strategic ambitions relate to the overall aims of the Society* so it should be noted that they do not all relate directly to the paralegal market. For example, the Society does not currently have any plans to work to provide formal qualifications for paralegals, believing that a number of options already exist that serve the market well. We will continue to develop this role in relation to solicitors.

### 41. The *Scottish Paralegal Association*, has been strongly in favour of more formal regulation for some time. Their views have received acknowledgement from employing solicitors, the Scottish Government, and providers of training and education.

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42. ***There is currently no fixed definition of what a paralegal is*** and those using the title do not require any particular qualifications, experience or to be registered with any professional or regulatory body. The Society feels this is confusing, and a potential risk both for those recruiting and employing, as well as those receiving service from, paralegals.
43. The ***Scottish Government*** is interested in what may happen in this area of the legal service market. There is a debate among some individuals and associations about what groups should have ‘rights of audience’ in courts and tribunals in Scotland. In the past this has also been examined by the Scottish Government (for example, see the Report by the Research Working Group on the Legal Services Market in Scotland, Scottish Executive, 2006, Chapter 9). If these rights are extended, and paralegals are a group to which they might be extended, then it is in the public interest and profession’s interest that these groups are regulated.
44. Those establishing the ***Scottish Legal Complaints Commission*** view the delivery of quality legal services as dependent on the whole legal team, although under the supervision of a solicitor. The Commission is likely to see appropriate recruitment, training, supervision and support of non-solicitor staff carrying out legal work as a core responsibility of the employing solicitor and firm. The ‘Registered Paralegal’ status should help guide paralegals and employers as to appropriate standards of conduct and service and guide clients and potential clients as to who they are dealing with when they have contact with a paralegal.
45. ***An increasing number of students leaving the LL.B. programmes either choose not to continue onto the next stage of training to become a solicitor or, in some cases, are unable to secure a place in the face of increasing competition.*** The same applies for those who graduate from the Diploma in Legal Practice, and then look for a traineeship (a two-year in office training period). A formal and regulated paralegal profession offers another option to these students, should they wish to continue to consider alternative careers in the legal services market. This ensures that a highly qualified cohort of individuals who have been educated in government funded education programmes have alternative career paths which use their knowledge and skills. It also increases the availability of skilled advisers to recruiting firms and to clients. This may also help some people take ‘time out’ of the qualification path to becoming a solicitor, returning to it later with experience learned as a paralegal. Clear advice and guidance will need to be provided that becoming a ‘Registered Paralegal’ would not, at the start of the scheme, be a part of the route to qualifying as a solicitor.

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46. The Society is currently reviewing the ‘route to qualification’ as a solicitor, and the work on ‘Registered Paralegals’ is informing, and being informed, by that project. More details can be found at [www.lawscot.org.uk/training/consult](http://www.lawscot.org.uk/training/consult).
47. ***The Society also has to consider an increasing number of ‘non standard’ applicants coming into the solicitors profession***, whether from Scotland, the UK, the EU (with particular requirements around the free movement of people and recognition of prior experience) or further afield. A more formal paralegal sector may assist in some of these cases, allowing those with experience as a ‘Registered Paralegal’ a more defined route to qualifying as a solicitor.
48. ***The Society is currently developing proposals to allow Alternative Business Structures into the legal services market.*** These are ‘alternatives’ to the current legal partnership model, and include different types of lawyers working together (for example, solicitors and advocates), different types of professional working together to offer a ‘one stop shop’ (for example, accountants and lawyers), and companies with share holdings and/or management control lying with non-solicitors. The proposals will allow firms to change if they wish, but will not require them to. New approaches to regulation will be required, and some of these may focus on the ‘business unit’ more than the current arrangements which tend to focus primarily on individual solicitors. This will increasingly mean regulating all the staff, and their roles, within a business which delivers legal services. Registering paralegals may become part of the work that will see standard setting for all staff who contribute to high quality client services.
49. ***‘The Society of Specialist Paralegals’*** is only open to those with CLT (either in association with Strathclyde or the University of West of England) qualifications, giving it a different position in the market to a more general ‘Registered Status’. It has made a positive contribution to the market and the Society continues to see the value that such a body brings to individual practitioners and the market. It is noted that 77% of respondents to a recent membership survey of the SSP answered ‘yes’ to the statement “*Should paralegals be accredited or licensed*” (page 13, Winter 2008, Issue 13 of ‘The Specialist Paralegal’). Many solicitors will not only be a member of the Society, but also a member of an alumni organisation of the university or law school that they graduated from. They may also be a member of a group such as the WS Society or the Scottish Law Agents Society. Increasing numbers wish an external badge of quality such as ‘Signet Accreditation’. It is believed that such complimentary arrangements are positive, and sit well alongside a ‘Registered Status’ that focuses of baseline criteria and regulatory structure.

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50. **Qualifications within the legal sector are being formalised in a number of areas.** Skills for Justice, the dedicated Sector Skills Council and Standards Setting Body for the Justice sector, has been working to develop sets of National Occupation Standards for a variety of roles and responsibilities, including related areas such as 'Legal Advice'. While none of these standards directly covers the full role of the paralegal it is indicative of a trend to more formal education and skills requirements within the sector. The Society wants to ensure it continues to develop policy in line with best practice, and believes this scheme starts to introduce a more formal structure for paralegals in Scotland. The Society is grateful to Skills for Justice for its informal advice and support which has assisted in the development of this project.
51. **If the Society does not act, another organisation may take an interest in the area.** The Society can offer the most effective and cost efficient membership services and regulatory oversight for paralegals, but while there is little clarity in the paralegal market other organisations may seek to take an interest. The sustainability of an individual professional association may also be compromised if organisations with a specific interest start to split membership making no one entity viable. Such interest groups would continue to be welcomed, just as a variety of groups are recognised within the practising solicitor's profession. The proposals would bring the benefit of clarity to the role and market.
52. **Solicitors already bear the cost of any issues arising from inexperienced, unqualified, or dishonest paralegals.** The protection given to consumers by the Master Policy and Guarantee Fund will cover payouts for work carried out by a paralegal, as this would have been supervised by an employing solicitors who should identify any issues. However, unlike the solicitors' branch of the profession, where regulation has been introduced to reduce the risk of a claim and associated costs, the only regulation of other staff within the legal office has been through the supervising solicitors. This is no longer seen as appropriate for the type and level of involvement paralegals now have in providing services to clients, and it is felt their should be standard setting for other staff taking part in the provision of legal service.
53. **The Society believes the proposed model regulatory model offers an appropriate way forward.** The proposals offer a first but significant step towards clear standards and regulation, but avoid placing undue financial or administrative burden on paralegals and solicitors.

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### 54. **WHAT ARE THE ARRANGEMENTS IN OTHER JURISDICTIONS?**

**The English and Welsh market has greater regulation and opportunity in this area.** The Society sees the benefits this has brought to the profession, paralegals and to clients. Key bodies in England and Wales include:

55. ***ILEX (The Institute of Legal Executives)*** represents around 22,000 Legal Executives in England and Wales. *“Legal Executives are qualified lawyers specialising in a particular area of law. They will have passed the ILEX Professional Qualification in Law in an area of legal practice to the same level as that required of solicitors.”* They are often fee-earners in private practice and their work is usually directly charged to clients. Legal Executives have also won various other rights:

- They may act as Commissioners for Oaths
- With extended rights of audience Legal Executive Advocates can now represent their clients in the county and Magistrates’ Courts
- ILEX is authorised under the Access to Justice Act 1999 to award ‘litigation rights’ to suitably qualified members
- ILEX manages complaints, under the oversight of the same Ombudsman as the Law Society/Solicitors Regulation Authority (SRA) in England and Wales
- Under current SRA proposals Legal Executives may soon be able to become partners in new style legal practices (Legal Disciplinary Practices) alongside solicitors and barristers

56. As an organisation, ILEX provides training and education; courses can be used as a route to entry as a solicitor. The organisation also has mandatory CPD, a Journal, and a Code of Conduct, and an active Pro Bono scheme. ILEX Tutorial College (ITC) is a leading provider of education to those wishing to become Legal Executives. At any one time it has around 5000 students enrolled making it a significant player in the English market. ILEX Paralegal Programmes (ILEX PP), provides a range of training, CPD, and courses. The qualifications achieved through ILEX PP can be transferred to the more formal route through ITC. ILEX also provides a route to qualifying as a solicitor. ILEX will participate in most high profile and governmental discussions on the legal services market in England and Wales.

57. ***The Institute of Paralegals*** is an incorporated, independent and not-for-profit professional body created to represent paralegals and legal support staff. The organisation was granted ‘Institute’ status by the UK government in 2005, after their application for this status was supported by the Law Society of England & Wales, the Bar Council, the Crown Prosecution Service, Citizens Advice and others.

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58. The institute has been active in developing national competency standards for advice givers in the legal market, their work in this field has contributed to the Society’s thinking in relation to the ‘competency map’ approach to educational standards (see below).
59. **The National Association of Licensed Paralegals (NALP)** provides qualifications and career development for paralegals and solicitor’s support staff. It aims to ‘fill the gap’ caused by the length of time it takes to qualify as a Legal Executive.
60. The aim of the Licensing provisions is to provide for the regulation of paralegals and to bring them in line with the rest of the legal profession. Whereas anyone can call themselves a ‘Paralegal’, only those who can fulfil the criteria laid down by the Association can call themselves a ‘Licensed Paralegal’. By gaining qualifications and experience, paralegals can work, through the Association, towards gaining the goal of being ‘Licensed’.
61. As a result of the of the career development offered by the Association, the University of Sunderland negotiated a programme with them to provide for their undergraduates on their LL.B. programmes the Association’s Higher Diploma in Procedural Law. This allowed the University to offer students an alternative career path if they do not secure a training contract to go on to qualify as a Solicitor. The effect is that on Graduation the student will receive their Law Degree, the Association’s Higher Diploma in Procedural Law and Graduate Membership of the Association. The University of Bradford are following suit.
62. **The Society has already examined the arrangements in other jurisdictions, particularly in relation to entrance requirements, but a wider research project is currently being undertaken Douglas Mill, Chief Executive of the Society, during a sabbatical period.** This project will focus on the arrangements and organisations present internationally, and will inform the final planning stages of the project alongside the discussion which takes place with key stakeholders on the contents of this paper.
63. **WHAT ARE THE BENEFITS TO SCOTTISH SOLICITORS, PARALEGALS AND CLIENTS?**
- The Society has a responsibility to promote the interest of the public and of the profession. The scheme also brings a numbers of benefits to solicitors, paralegals and clients:
- **Certainty as to the level of skills possessed by the paralegals** – reassuring clients, recruiting solicitors/employers, and giving professional recognition to paralegals
  - **Reassurance that staff/paralegals have the level of skill required by the professional bodies**, developed through wide and public consultation with all interested parties

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- **Clear outcomes for those wishing to train paralegals in-house and to education providers**
- **Reassurance that the Society is taking responsibility in this field**, where it is best placed to define the market through qualifications and standards.
- **Competitive advantage** – firms with ‘registered paralegals’ working within them will achieve a competitive advantage, by visibly employing and offering a highly qualified and skilled workforce to their clients
- **Cost-effectiveness** - the Society has significant experience in the functions which many now consider are required for paralegals (standard setting, CPD monitoring, etc.) for solicitors. The Society can offer cost-efficiency in a relatively small legal services market, and compared to an organisation only carrying out these functions for paralegals. As solicitors will pay for at least some ‘Registered Paralegal’ memberships, this is of benefit to them.
- **Tackling perceptions.** Broadening the involvement of the Society and working with others helps emphasises a collaborative and forward looking approach to the wider legal market. This is of benefit to the whole profession, those seeking to enter it, or those making a decision as to whether and from where to seek legal advice.

### 64. **WHAT ALTERNATIVES WERE CONSIDERED?**

The Society considered various alternatives prior to finalising these proposals. These included:

65. **Taking no action:** This was not considered to be in the best interests of paralegals, solicitors, stakeholders or the public – because of the variety of drivers identified in Section B of this document and the general lack of clarity around the paralegal role.
66. **Funding the SPA to develop regulation:** Although this proposal includes an element of revenue sharing with the SPA, to ensure a continued independent voice for paralegals in Scotland, it was not felt by either party that the market in Scotland was large or evolved enough at this point in time to absorb the costs of the SPA appointing full-time staff and procuring necessary support (such as IT infrastructure, management and accounts systems) to pursue this project on its own. As the scheme is voluntary, at this point, it was also felt that the Society’s involvement would improve the perception and value of the scheme to paralegals, employers and the public, compared to the Scottish Paralegal Association working alone (as currently it may be less well known to certain parties, such as clients and the public).

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67. **Looking to another organisation to take forward this type of work:** Although the Society is aware of, and has sought the views of, various other organisations working with paralegals these organisations either did not see formal regulation as part of their role, or other issues made such a solution unworkable. Due to the distinct nature of Scotland’s legal system the bodies involved in the English and Welsh market were not seen as viable partners at this stage.
68. **Requesting the Scottish Government formalise the paralegal role:** The Society and the SPA have both kept the Scottish Government aware of the development of proposals in this field. At this time it is considered a less formal initial approach is the most effective and cost effective for all parties concerned, whilst leaving the door open to consider more formal options in the future.
69. **Establishing a single qualification for paralegals:** Whilst the value of an education based solution was considered, a variety of challenges were identified. Firstly, it would not be appropriate to artificially limit entry to the paralegal market, nor exclude the current highly respected training providers. Indeed, the view was that a wide number of qualifications would be appropriate for entry. The practical nature of paralegal work also means that an entirely education based solution would be unlikely to be viable, and necessarily led back to some form of regulation of in-office work, even if only in the form of work-placement or paralegal traineeship. It was also considered important that any education policy was consistent with work currently under way in relation to solicitor training – where we are likely to see a widening of the market rather than a narrowing. Many highly skilled paralegals have, in the past, trained in office. A route to a single formal qualification would not address the issues facing this significant element of the existing paralegal population.
70. **The ongoing education and training review:** Some of the issues raised above relate to opportunities generally within the legal service market, be these in relation to Diploma places, traineeships, training as a paralegal, or legal qualifications which are relevant but not currently recognised as part of the formal route to becoming a solicitor or a paralegal. It should be noted that there is an ongoing review of the ‘route to qualification’ to become a solicitor, and that many of these issues, and possible means of addressing them, are also being considered as part of that project. Extensive consultation has already taken place, and more details can be found at <http://www.lawscot.co.uk/training/consult>. The suggestions made here are considered to be part of a complimentary package of reform, rather than a wholesale solution.

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### 71. WHAT HAS THE SOCIETY ALREADY COMMITTED TO?

Since its conception the SPA had a formal constitution appropriate to an emerging professional body. In 1997 the Society worked with the SPA to develop a Code of Conduct for Paralegals and a CPD requirement. Once these were introduced by the SPA the Society formally recognised them as the independent professional association for paralegals in Scotland.

72. In late 2004 and early 2005 the Society considered two papers on paralegals. The first of these set out in broad terms the current position of the market and key developments taking place at that time, including the role of the Scottish Paralegal Association. It also provided four options for the Society to consider in formalising its role in relation to paralegals. The second paper developed the preferred option, and, when approved, formed a 'service level agreement' with the SPA (helping support back office services such as IT, printing, and administration) and secured further official recognition for that organisation as the representative body for paralegals.

73. In August 2007 the Society authorised the current project (detailed below) having carefully considered background research, market information, and the benefits to solicitors, paralegals and clients the proposals would bring, as well as the risks associated with inaction.

74. The main aim of this phase of work was to create a voluntary 'regulatory' system. It was agreed, in close liaison with the Scottish Paralegal Association, that:

- a. a title ('Law Society of Scotland Registered Paralegal') and a brand identity were to be registered by the Society as a Trademark and through other relevant Intellectual Property frameworks
- b. a recognition/accreditation framework was to be established for those wishing to use the title – this is likely to specify entry standards, CPD requirements, and compliance with a Code of Conduct
- c. standards of attainment would require to be individually signed off by the employing solicitor, and some would need externally verified
- d. the scheme was to be marketed to solicitors and paralegals in Scotland
- e. the Society was to offer communications support to the new HNC / HND in law being offered across Scottish colleges and to work with the SQA, the national qualification body, on ongoing development work

75. Whilst this approach is now a firm commitment for the Society, this paper aims to examine what the detailed arrangements may look like, and seeks views on these suggestions.

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## 76. GENERAL QUESTIONS

77. A. We'd be grateful for some personal information, to help us contextualise your response. Could you let us know:

- **Name/Organisation:**
- **E-mail address:**
- **Current role/occupation:**
- **Number of years in practice (if a solicitor/paralegal/etc)**
- **The Society has to meet legal commitments in relation to Equality and Diversity. Rather than collect 'tick box' data on your race, religion and belief, sexual orientation, age, or any disability you may have we felt it was more appropriate to simply ask if any of these factors may influence your responses, the standards you feel paralegals should meet, or the way in which the Society finalises its policy in this area?**

78. B. Should the Society continue to move forward with its plans to introduce this scheme?

79. C. Do you believe the scheme will bring greater clarity to the market?

80. D. Can you identify any key strengths, weaknesses, threats and opportunities (SWOT) in relation to these outline proposals? *(Note, questions on the detail are provided below)*

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## D. WHAT IS BEING PROPOSED BY THE SOCIETY?

### 81. OVERSIGHT OF THE REGISTERED 'PARALEGAL' STATUS

It is proposed that the Law Society of Scotland and the Scottish Paralegal Association will agree a 'memorandum of understanding'. This document will outline the roles and responsibilities of the Society, the SPA, and the Standing Committee (see below). The document will be negotiated and agreed prior to the formal launch of any scheme originating from these proposals. The document will cover the initial two-year period of operation, after which time it will be reviewed.

82. It is proposed that a Standing Committee be established to oversee the scheme and its operations. This Committee would comprise 12 members:

- two members nominated by the Council of the Law Society of Scotland (nominated from among the membership of Council or a relevant Committee)
- one solicitor (not member of Council or Committee)
- two members nominated by the Scottish Paralegal Association (one being from their elected committee)
- two ordinary 'Registered Paralegals', with elections taking place once the first 100 registrations have taken place
- one members of the Society of Specialist Paralegals, elected from among the full membership of the SSP
- one member of another relevant paralegal society (for example, SOLAS)
- an additional three members will be 'public interest' members, recruited by public advertisement following the Society's policy on committee appointments. These members should not be, or have been, a solicitor, paralegal, advocate, or equivalent, within any jurisdiction

83. No member of this committee is to be an employee of the executive of any of the relevant organisations (The Law Society of Scotland, SPA, SSP, or Strathclyde/CLT).

84. The committee will be quorate in membership and meetings so long as more than eight positions are filled, but must seek to fill any vacant positions as soon as is reasonably practicable.

85. This Committee would be responsible for oversight of the scheme, and Panels comprised of committee members (see below for details) would deal with individual regulatory cases. The Scheme will specify appropriate governance arrangements.

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86. This Standing Committee shall be the appellate body for appeals of any decisions in relation to an application for entrance or a disciplinary matter.
87. This Committee shall appoint 'Panels' of three members, as and when required, to deal initially with individual entrance or disciplinary decisions. These 'Panels' must comprise a solicitor, a paralegal, and a public interest member, and all members must be present for the Panel to be quorate. The panel will be chaired by the solicitor member. The 'Panels' will have full authority to authorise or decline an application for entrance, or to dismiss or uphold a complaint (further details around complaints are provided below).
88. Members of a Panel which has made an original decision, which has become the subject of an appeal, will not take part in deciding any appeal remitted to the Standing Committee.
89. Significant changes to policy or process would require to be endorsed by the Council of the Society, and through whatever arrangements the SPA considers appropriate.
90. An initial Scheme of Operation will be approved and published by the Council of the Society and by the SPA. The Standing Committee will be responsible for ensuring the requirements of the scheme are met, that any issues about the operation of the scheme which require to be amended are timeously raised with the Council of the Society and with SPA, and that appropriate solutions are recommended.
91. The Scheme of Operation will detail the responsibilities of the Society and SPA, and how any fees are to be shared.
92. Day to day operation of the Scheme will be managed and administered by staff of the Law Society of Scotland, under the supervision of the Standing Committee.
93. The initial Scheme of Operation will specify what tasks may be delegated to a sub-committee, working party, and/or to the executive staff of the Society made available by the Council of the Society to manage and administer the scheme.
94. **E. Do you believe this approach would offer effective oversight of the 'Registered Paralegal' status?**

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### 95. **THE 'REGISTERED PARALEGAL' STATUS**

Those meeting the Qualification and Entrance Criteria (discussed below) would be eligible for entry as a 'Law Society of Scotland Registered Paralegal'. Becoming 'Registered' would be voluntary, but only those registering would be entitled to use the title and receive the benefits of membership of the new professional status.

96. Those wishing to achieve this status would also be required to annually commit to:

- Compliance with a Code of Conduct (covering personal and business standards)
- A CPD requirement
- The requirement to notify the Standing Committee of any material changes to circumstances

97. The Society will maintain and publish a 'Register' of paralegals who have met all the requirements and hold the 'Registered Paralegal' status. An annual renewal will be required.

98. A fee will be charged. It is currently envisaged this will be around £100 per annum for fully registered members. This will allow the scheme to be largely self-funded, meaning that the cost of membership and regulation will be funded by those who will receive the benefits, and by those business units where regulatory risks may lie. The fee will not, initially, be tax deductible for firms (as initially membership will not be compulsory) but it will be zero rated for VAT. The fee may be tax deductible for those who are self-employed.

99. Those on the 'Register' will be licensed to use title 'Law Society of Scotland Registered Paralegal' (and any appropriate grade, such as 'trainee', 'member', or 'senior paralegal') after their names, including on notepaper, websites, and promotional material.

100. The Society reserves the right to take appropriate action against anyone using the title without the permission (in the form of a license issued upon registration, and at renewal each year thereafter).

101. Membership of the 'Registered Status' will not preclude members from holding membership of other professional associations, so long these do not create conflict in terms of ethical codes.

102. Clear advice and guidance will need to be provided that becoming a 'Registered Paralegals' would not, at the start of the scheme, be part of the route to qualifying as a solicitor.

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103. **F. Do you believe this approach would establish an effective and meaningful 'quality marque' for paralegals?**

## 104. GRADES OF 'REGISTERED PARALEGALS'

In examining the arrangements made by other similar professional associations, and paralegal bodies within other jurisdictions, it is proposed that more than one 'grade' of membership be offered. It is suggested that by the date of the launch of the Scheme that two grades be defined:

- Trainee 'Registered Paralegal' (more details provided below), and
- 'Registered Paralegal'

105. After the scheme has been established, and an initial cohort of members registered, it is proposed that the Standing Committee consult with members and others on the establishment of further grades; with the most likely one being Senior 'Registered Paralegal'. In the future there may be the opportunity to explore other such grades (for example, fellowship). The Society do not anticipate 'specialist accreditation' (such as the Signet Accreditation scheme for solicitors) but anticipates that others will continue to develop such badges of quality within the market (such as Strathclyde/CLT and SOLAS). This evolutionary approach appears to be best practice within this type of project.

106. **G. Do you believe these are appropriate grades to prepare for the point of launch, and to consider developing in the future?**

## 107. ENTRANCE CRITERIA – THE COMPETENCY MAP

*All applications, apart from the two exceptions noted directly below, will be dealt with in the same consistent manner set out in paras 112 to 149..*

108. **Exception 1:** In 'appropriate circumstances' a 'Panel' of Standing Committee members will have the authority to admit to the Register anyone it considers to have met a directly equivalent standard, but who does not, for some reason, meet the exact requirements set out. The Standing Committee will be able to do so without reference to the Council of the Society or the Committee of the SPA. Decisions can be appealed to the full Standing Committee (further details are provided, stating at para 151).

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109. **Exception 2: Transition arrangements**, to operate for the first year of the scheme for existing members of the Scottish Paralegal Association and certain other registered professionals, such as SSP who are already in discussions with us. Transition arrangements are detailed in a separate section (starting at para 156).
110. All other applicants will be asked to demonstrate their competence against a defined '**competence map**' (maintained by the Standing Committee). Memberships of any current association is not a prerequisite.
111. ***Dr Andrew Fulton Philips (Deputy Director of Education and Training) has, in consultation with paralegals, current training providers, and employing solicitors developed the initial draft of this competence map.***
112. A draft '**generic knowledge and skills framework**' (applicable to all paralegals) has been created. **These generic skills will need to be demonstrated in a particular area of law.** Drafts have currently been completed for several 'legal areas' including civil litigation, criminal litigation, wills and executives, conveyancing, debt recovery and licensing – the most common areas of practice. More will be developed after the initial launch, in association with interested parties.
113. These drafts are based on a desk based assessment of current UK statements of competence for paralegals / legal executives, and of other articulations of competence within the legal sector (for example, the National Occupational Standards for Legal Advice Givers). Policy in relation to the education and training of solicitors in this, and other, jurisdictions was also taken into account. This was then followed by informal consultation with key stakeholders including current providers, employers, and paralegals.
114. **It should be noted that the 'competency map' will be used to underpin both qualifications and then in-office experience, which are looked at in more detail in the following two sections.**
115. The Society believes that such an approach guides those studying for qualifications or in a period of in-office training, assists those providing such opportunities, provides clarity to clients and others as to what the required standards are, and assists in the fair and appropriate evaluation of 'non standard' applications.

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116. These drafts are available on the Law Society of Scotland website, and are also the subject of current discussion. We would be grateful if interested parties examined the draft and fed back on the suggested standards.

117. H. Do you believe the 'competency map' approach to entrance criteria is appropriate?

## 118. ENTRANCE CRITERIA – QUALIFICATIONS

All applicants must demonstrate:

- That they hold a **formally recognised and assessed qualification** which covers appropriate elements of the competency map
- That they have **an appropriate amount of in-office experience** gained under the supervision of a Scottish solicitor holding a current Practising Certificate from the Law Society of Scotland.

119. A **formally recognised and assessed qualification** will be one awarded by:

- a Scottish University or College; or,
- a University or College in another jurisdiction which has similar requirements in relation to teaching, quality assurance and assessment as a Scottish University or College; or,
- a training organisation which has similar requirements in relation to teaching, quality assurance and assessment as a Scottish University or College.

The course must cover an area of law relevant to the legal 'competency map'.

120. It should be noted that these qualifications might be delivered in a variety of different format (for example; day release, evening classes or distance learning). They may be provided 'in house', with an external training organisation coming into an organisation to provide a tailored qualification to a particular group of staff. They may even be provided directly by an employing organisation, who may have an externally verified training status (such as through the arrangements for SVQs or as an accredited provider of Professional Competence Courses).

121. Those who have attained a recognised qualification, have a job supervised by a Scottish solicitor, and are carrying out appropriate work to allow them to meet the competence requirements will be granted 'Trainee Registered Paralegal' status.

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122. Those who have attained a qualification but do NOT have a relevant job to allow them to attain the required in-office experience will not be able to Register. However, it is likely that the SPA will continue to offer a stand-alone membership to these groups (separate from the ‘Registered’ status) at ‘student’ or equivalent level.
123. Verification of the satisfactory attainment of a qualification will be required (usually through presentation of appropriate certificate or transcript). As part of the application process the student will authorise the Society to check with the provider that they have the stated qualifications. The Society will periodically carry out samples to ensure the integrity of the system.
124. It is hoped in the future that the Society can work with all providers of paralegal training to ensure that qualifications likely to meet the entrance requirements are ‘badged’ as such.
125. Some paralegals may work part-time, or only part of their work may be paralegal work. This is no different to in the solicitors profession where part-time working is becoming increasingly common and many solicitors have additional elements to their work (for example, spending an allocated amount of time as a ‘business development’ partner, or an associate in charge of IT systems within the office). In all such cases it will be the **level** and **nature** of the relevant legal work they undertake which will determine whether or not they are eligible for ‘Registered Paralegal’ status.

126. I. **Do you believe this is an appropriate standard in relation to formal qualifications?**

### 127. **ENTRANCE CRITERIA – IN-OFFICE EXPERIENCE**

Throughout our discussion with stakeholders it has been the consistent view that, because the work is highly practical, a vital part of qualifying as a ‘Registered Paralegal’ must be a period of in-office experience, under the supervision of a Scottish solicitor holding a current Practising Certificate from the Law Society of Scotland.

128. The Society is aware it must balance the need for a formal and supervised period of training, with ensuring that any arrangements put in place are proportionate and do not act as an artificial barrier to those who may wish to qualify as ‘Registered Paralegals’.

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129. It may be that, in some cases, ‘under the supervision of a Scottish solicitor’ would not mean employed by a Scottish solicitor or in an in-house legal department. For example, a law clinic or citizen’s advice service may work closely with a solicitor’s firm, having elements of the work of their paralegal checked by them and with the paralegals seeking advice on ‘hard cases’. In such a situation it will be possible for a non-standard application (see below) for entrance made with the support of the employer and an external solicitor who supervises their work. Such decisions are likely to be based on individual circumstances, and would require the consent of a ‘Panel’
130. **It is proposed that a period practice equivalent to one year’s supervised practice should be required prior to registration as a full member.** (for example, two years of working two and a half days per week).
131. Those wishing to become ‘Registered Paralegals’ will be required to register as a paralegal trainee, and will then be authorised to use the title ‘Registered Paralegal – Trainee’.
132. During the training period it is likely that the **paralegal** will be required to maintain a simple log (or portfolio) of their work, mapping experience (from their qualification and from their in-office work) against the ‘competency map’.
133. During the training period it is likely that the **supervising solicitor** will be required to have a quarterly meeting (start, end of month 4, end of month 8, and a completion meeting) with the paralegal, during which:
- They sign off the log that that paralegal has kept of their work as accurate
  - They appraise the overall performance of the paralegal against a set standard
  - In the final meeting, that they sign-off the paralegal
134. The Society is still exploring whether some form of external assessment is required at this stage, although noting that the ‘route’ to qualification does require formal external assessment as all paralegals registering will have need a formal qualification. **Your views on whether external assessment is required, and what might be appropriate in this respect are welcomed.** Examples of effective, but efficient, ‘assessment’ might include allowing a paralegal to choose from:
- Requiring the **paralegal** to request feedback from five ‘clients’ using a simple structured feedback tool (for example, five questions rated 1 to 5)
- OR**  
**Cont overleaf...**

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- Requiring the **paralegal** to request feedback from two solicitors they have transacted with in other firms, again using a simple structured feedback tool (for example, five questions rated 1 to 5)

**OR**

- Requiring the **paralegal** to complete a multiple choice assessment on key areas of professional practice and conduct (to be developed alongside a university or training organisation)

**OR**

- Requiring the **paralegal** to attend a local interview, comprising a trained panel, using a structured questioning technique to ensure competency against the competency map

In the case of the first two suggestions, the **supervising solicitor** would be required to sign these off as present within the portfolio and being of an appropriate standard during the quarterly review/completion meeting.

135. It is noted that these arrangements should provide structure and ensure the requirements of the competency map are met, whilst at the same time fitting well with the arrangements most firms will already have in place for appraisal and review.

136. It should be noted that, where a paralegal has significant levels of in-office experience prior to registering with the scheme, there may be the possibility of a streamlined process, with the **paralegal** and the **supervising solicitor** holding a single assessment meeting to assess past performance against the competency map. It is suggested that, as an additional safeguard in the streamlined process, two supervising solicitors would be required to sign-off the documentation, and that the paralegal would be required to have a minimum of 2 years in-office experience.

137. J. **Do you believe these requirements for work-based learning are appropriate?**

138. K. **Do you have views on the need for, and appropriate level of, external assessment during the in office training period?**

139. L. **Do you have views on the availability of a streamlined process for those with significant in-office experience (these being separate to the transition arrangements discussed below).**

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### 140. **ENTRANCE CRITERIA – CHARACTER AND SUITABILITY**

Many professional associations and regulatory bodies also perform 'character and suitability' or 'fit and proper' tests on applicants. These may range from requiring 'enhanced' (teaching) or 'standard' (solicitors) 'Disclosures', or by other means such as self-declaration and reference checks.

141. The Society must balance setting an appropriate standard against creating artificial barriers to entry. The Society must also be careful that its policy is proportionate to risk, and the takes into the consideration of cost (a 'standard' disclosure requirement would add a minimum of 25% to the currently proposed initial fee).

142. The following approach is proposed, for paralegals:

- A self-declaration of criminal convictions, bankruptcy, or discipline by another regulator
- A process, overseen by a 'Panel' if there is an issue – similar to a 'non standard' application (discussed below)
- A duty to report any change in circumstance – with it being disciplinary offence to fail to declare at any point
- The possibility of a structured character reference being requested for new applicants.

143. The Society is considering whether it might operate the scheme for six months prior to allowing non-standard applicants. This is considered a proportional response to the challenges that may arise if a high volume of applications are being received during the first few months of operations. It is also noted that this would be part of an 'establishment' phase, rather than be an ongoing issue for the scheme. Views are welcomed on whether this would be an appropriate course of action if predicted volumes of registration suggested it was required.

144. The Society believes it may be necessary to revisit this issue, for new members, as the scheme develops and if it becomes more formalised.

145. **M. Do you believe this is an appropriate way to deal issues around character and suitability?**

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### 146. ENTRANCE CRITERIA – DEALING WITH NON-STANDARD APPLICANTS

As noted above, the competency map approach should assist in the consideration of ‘non standard’ applications. These might be applicants with many years highly skilled in office experience, but a legal qualification not automatically recognised (for example, a law degree from another country). Another example would be someone working in a legal environment and in close contact with solicitors, but not being directly employed by solicitors.

147. Where an application does not fit the criteria which staff have delegated authority to authorise, a Panel (as described above) will consider the application.

148. A process will be put in place where:

- The paralegal is informed their application is being referred to a Panel
- The paralegal will be asked to provide additional information (including specific requests, and any items they feel are relevant)
- The Panel will meet to consider the application, and can decide either to accept the applicant, to interview the applicant, or to refuse the application
- Any interview will be conducted by the same Panel as reviewed the paperwork, and will be a structured discussion around areas of concern
- The outcome of an interview may be to accept or refuse the application for entrance
- A refusal, at any stage, must be accompanied by written details of the reason
- In all cases the standards referred to in decision making will be the competency map and the Code of Conduct

149. **N. Do you believe this is an appropriate way to deal with non-standard applications?**

### 150. TRANSITION ARRANGEMENTS

In establishing a new scheme such as this it is often necessary to identify a cohort of individuals **who already meet the standards** who can be ‘transferred’ from existing arrangements into a new scheme to assist with its establishment and early development.

151. It is proposed that all existing members of the Scottish Paralegal Association who meet the following criteria be automatically eligible for entry into the ‘Registered Status’:

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- That they hold a **formally recognised and assessed qualification** relevant to their work as a paralegal (including, but not necessarily limited to, an HNC/HND in Legal Studies, a Strathclyde/CLT or Reward Training Qualification, or a degree with law in the awarding title from a Scottish University).
- That they have more than **two years work experience** gained under the supervision of a Scottish solicitor holding a current Practising Certificate from the Law Society of Scotland.
- That they have been **registered** with the Scottish Paralegal Association, at Grade 1 of the SPA grades scale, for a period of two years or more at the date of application.
- That they have **not been subject of any complaints** to the SPA for breaching the SPA Code of Conduct AND **have met the CPD requirements** in each year they have been registered.

As SPA members require their applications to the SPA to be signed by their supervising solicitor, this does not need to be checked again for those transferring into the ‘Registered Paralegal’ from the SPA.

152. Other SPA members will, of course, be eligible for entry to the scheme from the date of the launch, but will have to follow the full application process alongside other applicants.
153. There may be other groups the Society can work with to allow transition. Any group wishing to be considered under transition arrangements would need to provide evidence to the Standing Committee that members meet the same, or substantially similar standards, including:
- That the group hold a **formally recognised and assessed qualification** relevant to their work as a paralegal (including, but not necessarily limited to, an HNC/HND in Legal Studies, a Strathclyde/CLT or Reward Training Qualification, or a degree with law in the awarding title from a Scottish University).
  - That the group have more than **two years work experience** gained under the supervision of a Scottish solicitor holding a current Practising Certificate from the Law Society of Scotland, and that this experience is signed off by a Scottish solicitor in the understanding that a professional conduct issue may arise if they provide inaccurate information
  - That the group are **registered** with an established supervisory or educational body, and that the members being suggested for transitional arrangements have been registered with the group for a period of two-years or more at the date this scheme comes into effect.

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- That the group have ***not been the subject of any complaints*** to that body for breaching that body’s code, ethics, quality assurance arrangement *or* equivalent AND members have had to carry out, and ***have met the CPD requirements*** each year

The Standing Committee would consider each application from another body for recognition under the transition arrangements on its individual merits.

154. The Society of Specialist Paralegals has already noted interest in bringing elements of their membership within the transition arrangements, and requesting solicitors to sign off competency against the standards. The Society welcomes others notes of interest about transition arrangements.
155. If a group is recognised those members meeting the standard and wishing to join the ‘Registered Status’ will be subject to the transition arrangements and a simpler application process. If a group is not recognised individuals, are still welcome to come forward under the normal membership route.
156. It is proposed that these ‘transition arrangements’ are allowed for ***one year*** from the initial launch date of the ‘Registered Paralegal’ status.

157. **O. Do you believe these transition arrangements are appropriate?**

### 158. **A CODE OF CONDUCT**

The Scottish Paralegal Association has, for a number of years, had a Code of Conduct. The Law Society of Scotland has its own Code of Conduct for solicitors, this Code applies to all work they carry out, and, consequently, some standards are relevant in relation to work that is delegated within the law office.

159. It is proposed that a new Code for ‘Registered Paralegals’ is produced, taking into account recent research and consultation on the Solicitors code, and that it be applied to all ‘Registered Paralegals’.

160. **P. Do you believe a Code of Conduct is the appropriate way to set out and manage standards for professional and business conduct?**

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### 161. CONTINUING PROFESSIONAL DEVELOPMENT

The Scottish Paralegal Association already has a CPD requirement for its members. This is based on a requirement to undertake 10 hours of Continuing Professional Development (CPD) in each practice year. A maximum of 4 of these hours may be undertaken by way of private study: the balance will require to be taken in group study. The Society of Specialist Paralegals also has CPD requirements in place. It is likely that 'Registered Paralegals' will be required to meet similar requirements, or that a slightly enhanced scheme will be introduced. Your views on whether the requirement should be increased to twenty hours are specifically sought. In either case the Society will monitor CPD compliance of 'Registered Paralegals', and any developments are likely to be in-line with the current work on reforming CPD for solicitors.

162. There is likely to be a requirement for paralegals to keep an on-line log of their CPD attainment, to allow for semi-automated monitoring of compliance. This will also allow patterns to be established, that may ensure more efficient regulation in the future (for example, we would build an awareness of how many front-line staff are attending formal money laundering training).

163. It is likely that a wide variety of activities will be encourage for CPD, ranging from informal shadowing and research, to formal qualifications and assessment. An emphasis will be placed on paralegals reflecting on, recording, and putting into practice what has been learnt from CPD, rather than unduly focussing on prescriptive requirements.

164. The Society hopes a wide range of providers will continue to offer, and will develop, CPD training for paralegals, as currently happens in the solicitors market. A free website 'link' to all training providers who note interest will be provided within the CPD documentation for paralegals, to ensure they have access to a range of opportunities.

165. The Joint Standing Committee will develop and publish a formal statement on CPD requirements. This statement will also detail the arrangements for those who may take maternity leave of career breaks during the CPD period, and other issues arising.

166. **Q. Do you believe these are appropriate arrangements for CPD?**

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### 167. **RECOGNITION OF TRAINING PROVIDERS**

In the past there has been discussion of the formal accreditation of training providers, with many in the sector supporting in principle the concept of accreditation. The Society does not believe, at this stage of development of a scheme, formal accreditation is the way forward, and believes many qualifications will contain relevant and appropriate elements. The preferred approach, as stated above, is that a) the individual must hold a formal qualification meeting certain standards (formal assessment and QA of the programme) and b) is judged against the ‘competency map’, able to demonstrate some elements through their qualifications, others through in office experience, and others through both. In the future, there may be a badging or accreditation scheme developed, in consultation with others, for programmes which clearly match the ‘competency map’.

### 168. **COMPLAINTS IN RELATION TO CONDUCT**

It is anticipated that very few complaints against paralegals will be received.

169. If a client is dissatisfied with the service they have received, then they will be directed to make their complaint firstly to the employing firm and, if a satisfactory outcome is not achieved, to the new Scottish Legal Complaints Commission. This is because currently work carried out by a paralegal is still the responsibility of the employing solicitor.

170. However, it may be that the outcome of such a complaint, if upheld against the solicitor, identifies that the issue also, or primarily, relates to a paralegal under that solicitor's supervision. For example, a paralegal has lied to a client; the Commission and the Society would have managed the complaint against the supervising solicitor and firm, but if real responsibility, rather than regulatory responsibility, is primarily seen to be with the paralegal a complaint may be made to the Society that they should be removed from the Register of paralegals.

171. The only other situation envisaged in which a complaint is likely is one coming from a related or third party, where there is concern that the paralegal is in breach of the Code of Conduct, possibly not directly related to the work situation. For example, a paralegal who has, in their personal life, submitted false financial information to a credit provider, who has, on completion of an investigation, then contacted the Society to notify us of concerns as to the paralegal's probity

172. In either situation, the Society will manage the complaint in a similar way. The arrangements for complaints against solicitors are currently being reviewed, and it is recognised that whilst the solicitor scheme will be different and have elements that would not be appropriate, or indeed possible in relation to paralegals (for example, referral to the

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Scottish Solicitors Disciplinary Tribunal) that there should be consistency where possible with the arrangement for paralegals. It is likely the process will also be similar to the one provided above in relation to non-standard entrance applications, but with an enhanced information gathering stage.

### **173. R. Do you believe these are appropriate arrangements for the management of complaints?**

#### **174. EQUALITY AND DIVERSITY**

The Society is covered by a variety of equality legislation, as well as its own Equality and Diversity Strategy (2005 to 2008). There are also Public Sector Duties, which cover some of the Society's functions (those deemed 'public functions'), in the areas of Race, Disability and Gender. The Society's own policy is that a similar standard to those contained in these duties should also be applied to the other 'strands' of equality, including age, religion and belief, and sexual orientation.

175. These duties mean we need to ensure that we do not discriminate against any of the 'protected groups' in the delivery of any of our services, and also that we have positive duties to 'promote good relations'. Finally, we also need to ensure we are consulting and involving all the groups that make up the public and profession when developing key policies.

176. Any system with entrance criteria and setting out standards that must be met has the potential to affect different groups in different ways. For example, if we tried to insist that all applicants for 'Registered Paralegal' status were 'graduates' (without requiring a particular degree, as is the case for solicitors) this could discriminate on the grounds of age and gender, as there is a generation of people among whom university attendance was far less common.

177. We have tried to ensure in this proposal that no groups will be unfairly adversely affected; however, we would particularly value your views on these issues and on whether you believe this scheme will be fair to all.

### **178. S. The Society is committed to ensuring equality and diversity issues are considered in all our work. Do you think that any groups of solicitors, paralegals or clients, covered by equality legislation, may be affected more than others by the arrangements set out in this policy position paper?**

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## 179. QUESTIONS ON THE OVERALL SCHEME

180. T. Having read the detailed proposals, do you believe this scheme is appropriate for the Society to move forward with?
181. U. Can you identify areas of strength in the proposed arrangements?
182. V. Can you identify areas that you feel require further development (and specifically what that development is)?

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## E. FURTHER INFORMATION

### 183. WEBSITES

**For those interested in accessing further information on paralegals in Scotland, and in England and Wales, the following websites will provide a range of information:**

The Law Society of Scotland	<a href="http://www.lawscot.org.uk">http://www.lawscot.org.uk</a>
Scottish Paralegal Association (SPA)	<a href="http://www.scottish-paralegal.org.uk">http://www.scottish-paralegal.org.uk</a>
The Scottish Qualifications Authority	<a href="http://www.sqa.org.uk/sqa/26256.html">http://www.sqa.org.uk/sqa/26256.html</a>
Society of Law Accountants in Scotland (SOLAS)	<a href="http://www.solas.co.uk">http://www.solas.co.uk</a>
Central Law Training (CLT)	<a href="http://www.clt-scotland.co.uk">http://www.clt-scotland.co.uk</a>
Society of Specialist Paralegals (SSP)	<a href="http://www.specialistparalegals.co.uk">http://www.specialistparalegals.co.uk</a>
Rewards Training	<a href="http://www.rewards-trc.co.uk/oppscot.html">http://www.rewards-trc.co.uk/oppscot.html</a>
Scottish Solicitors Discipline Tribunal	<a href="http://www.ssdtd.org.uk">http://www.ssdtd.org.uk</a>
Skills for Justice	<a href="http://www.skillsforjustice.com">http://www.skillsforjustice.com</a>
ILEX (Institute of Legal Executives) [E&W]	<a href="http://www.ilex.org.uk">http://www.ilex.org.uk</a>
National Association of Licensed Paralegals [E&W]	<a href="http://www.nationalparalegals.com">http://www.nationalparalegals.com</a>
Institute of Paralegals [E&W]	<a href="http://www.instituteofparalegals.org">http://www.instituteofparalegals.org</a>
The Scottish Legal Complaints Commission	<a href="http://www.scottishlegalcomplaints.com">http://www.scottishlegalcomplaints.com</a>

Report by the Research Working Group on the Legal Services Market in Scotland, Scottish Executive, 2006:

<http://www.scotland.gov.uk/Publications/2006/04/12093822/23>

### 184. THE JOURNAL

A variety of articles in The Journal of the Law Society of Scotland have covered issues relating to the regulation of paralegals. Reference to a selection of these, which might help further inform your views on the issues, are provided below. The Journal website is available free to anyone interested (including access to all these articles), and the magazine is distributed monthly to all members. The issues have also been extensively covered in the general press, including in the Scotsman and The Herald.

#### **Paralegal qualifications launched**

SQA partners Association to launch HNDs, HNCs and specialised awards  
*News, 30 January 2008*

#### **Small is doable**

The real threats to small practices are the problem of recruiting, and looming succession issues. But there are strategies that can, and should, be adopted now  
*The Journal, January 2008, page 32*

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### **Training solicitors and teaching law**

Professor Norrie replies to the criticisms of LLB teaching in the July issue; Brian Allingham proposes an alternative route to qualification

*The Journal, September 2006, page 10*

### **Don't leave gaps in regulation**

Opinion column asking why, given the current regulatory debate, is more attention not paid to the position of paralegals, whether in private practice or in-house

*The Journal, August 2006, page 9*

### **Unseen force**

Contributions on the role of paralegals in different sized firms and the moves being made to grade them by qualifications and experience

*The Journal, September 2005, page 14*

### **Future present**

Revisiting the 1968 predictions of Charles Fraser for the future of the profession, and trying to project forward from the present day

*The Journal, April 2005, page 14*

### **The future of conveyancing**

Survey of opinions as to how the profession will adapt to the age of e-conveyancing and paralegals

*The Journal, November 2002, page 21*

## **185. POTENTIAL SPONSORS**

The Society can provide unrivalled access to a large sector of professionals working within the legal services market. Our website, Journal and E-bulletins are read by solicitors, paralegals, advocates, and others working within law organisations (from HR and IT to legal knowledge managers and law accountants). This market amounts to more than 35,000 people in Scotland.

186. The Society is happy to consider working with commercial organisations to provide access to this market, if it helps us achieve 'best value' for our members. The 'Registered Paralegal' status will provide exciting new opportunities for advertisers and sponsors to engage with this emerging market. Specific opportunities for partnering the Society will include:

- Supporting the self-service database and website (1 year), allowing a single major sponsor to display their logo and a link to their website on the new website where paralegals will log on regularly to register, update their CPD records, access information, and download resources.

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- Supporting the quarterly paralegal e-bulletin (1 year) – sent to all paralegals and key decision makers in the legal market in Scotland
- Supporting marketing materials sent to all firms in Scotland (a quarter A4 page advert in the key initial marketing documents that will be sent to every firm in Scotland by the Society)
- Supporting CPD events and online learning for paralegals in Scotland.

For rates, please contact Charlotta Cederqvist [charlottacederqvist@lawscot.org.uk](mailto:charlottacederqvist@lawscot.org.uk)

187. More information on the Society’s Service Provider Scheme, which allows companies access to all of the Society’s members can be found at:

[http://www.lawscot.co.uk/Members Information/Service Provider Scheme](http://www.lawscot.co.uk/Members%20Information/Service%20Provider%20Scheme)

### 188. CONTACT INFORMATION

Please send your responses, or direct any questions, to:

- **Neil Alan Stevenson – Head of Strategic Change**
- [registeredparalegals@lawscot.org.uk](mailto:registeredparalegals@lawscot.org.uk)
- T. 0131 476 8360, Minicom 0131 476 8359

Any parties interested in registering interest themselves, or for their staff, as members of any future scheme can register (by any of the above means) to be contacted as further information becomes available.

If your enquiry relates is about the Scottish Paralegal Association, you may wish to contact their President:

- **Christine Lambie**
- [Christine.Lambie@wgrant.com](mailto:Christine.Lambie@wgrant.com)
- <http://www.scottish-paralegal.org.uk>

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## F. SUMMARY OF QUESTIONS

- A. We'd be grateful for some personal information, to help us contextualise your response. Could you let us know:
- *Name/Organisation:*
  - *E-mail address:*
  - *Current role/occupation:*
  - *Number of years in practice (if a solicitor/paralegal/etc)*
  - *The Society has to meet legal commitments in relation to Equality and Diversity. Rather than collect 'tick box' data on your race, religion and belief, sexual orientation, age, or any disability you may have we felt it was more appropriate to simply ask if any of these factors may influence your responses, the standards you feel paralegals should meet, or the way in which the Society finalises its policy in this area?*
- B. Should the Society continue to move forward with its plans to introduce this scheme?
- C. Do you believe the scheme will bring greater clarity to the market?
- D. Can you identify any key strengths, weaknesses, threats and opportunities (SWOT) in relation to these outline proposals? *(Note, questions on the detail are provided below)*
- E. Do you believe this approach would offer effective oversight of the 'Registered Paralegal' status?
- F. Do you believe this approach would establish an effective and meaningful 'quality marque' for paralegals?
- G. Do you believe these are appropriate grades to prepare for the point of launch, and to consider developing in the future?

These drafts are available on the Law Society of Scotland website, and are also the subject of current discussion. We would be grateful if interested parties examined the draft and fed back on the suggested standards.

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- H. Do you believe the 'competency map' approach to entrance criteria is appropriate?
- I. Do you believe this is an appropriate standard in relation to formal qualifications?
- J. Do you believe these requirements for work-based learning are appropriate?
- K. Do you have views on the need for, and appropriate level of, external assessment during the in office training period?
- L. Do you have views on the availability of a streamlined process for those with significant in-office experience (these being separate to the transition arrangements discussed below).
- M. Do you believe this is an appropriate way to deal issues around character and suitability?
- N. Do you believe this is an appropriate way to deal with non-standard applications?
- O. Do you believe these transition arrangements are appropriate?
- P. Do you believe a Code of Conduct is the appropriate way to set out and manage standards for professional and business conduct?
- Q. Do you believe these are appropriate arrangements for CPD?
- R. Do you believe these are appropriate arrangements for the management of complaints?
- S. The Society is committed to ensuring equality and diversity issues are considered in all our work. Do you think that any groups may be affected more than others by these proposals?
- T. Having read the detailed proposals, do you believe this scheme is appropriate for the Society to move forward with?
- U. Can you identify areas of strength in the proposed arrangements?
- V. Can you identify areas that you feel require further development (and specifically what that development is)?

**Please note: a 'Word' version of these questions is available on our website, if you wish to use that as a template for responding.**

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## G. RAPID RESPONSE FORM

We would be grateful for as much detailed feedback as possible, and would encourage everyone to complete the full set of questions (see F above), or simply those which you feel it is important to respond on.

However, we also recognise that some people may wish to give very quick feedback (perhaps to say it's a good idea, or that they see particular challenges) without providing detailed responses. We would encourage everyone reading the document to do this. **IF AT ALL POSSIBLE WE WOULD BE GRATEFUL IF YOU COULD FILL THIS OUT ONLINE AT ([HTTP://WWW.LAWSCOT.ORG.UK/PARALEGALS](http://www.lawscot.org.uk/paralegals))**, but if not we have included a simple form below that can be returned by fax, e-mail or post.

<b>Please provide</b>						
<b>Name/Organisation:</b>						
<b>An e-mail address:</b>						
<b>Current role/occupation:</b>						
<b>Number of years in practice (if relevant):</b>						
<b>Do you want to be kept up to date with developments (yes/no)</b>						
<b>Please rate your agreement with the following:</b>	<b>Strongly Agree</b>	<b>Agree</b>	<b>Neither agree not disagree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>No view</b>
I believe that some form of 'registered' status would be a positive development						
I believe entrance requirements and standards of conduct should be set						
I believe both a formal qualification and in-office experience should be required						
I believe a range of qualifications should be recognised as relevant						
I believe in-office experience will need assessed or signed off in some way						
I believe the joint committee should provide effective oversight of the scheme						
I believe that the <b>overall proposals made</b> are an appropriate way forward						
<b>The Society has to meet its legal commitments in relation to Equality and Diversity. Do you think that any groups of solicitors, paralegals or clients, covered by equality legislation, may be affected more than others by the arrangements set out in this policy proposal?</b>						
??						
<b>Do you have any other comments you wish to share with us at this time?</b>						
??						